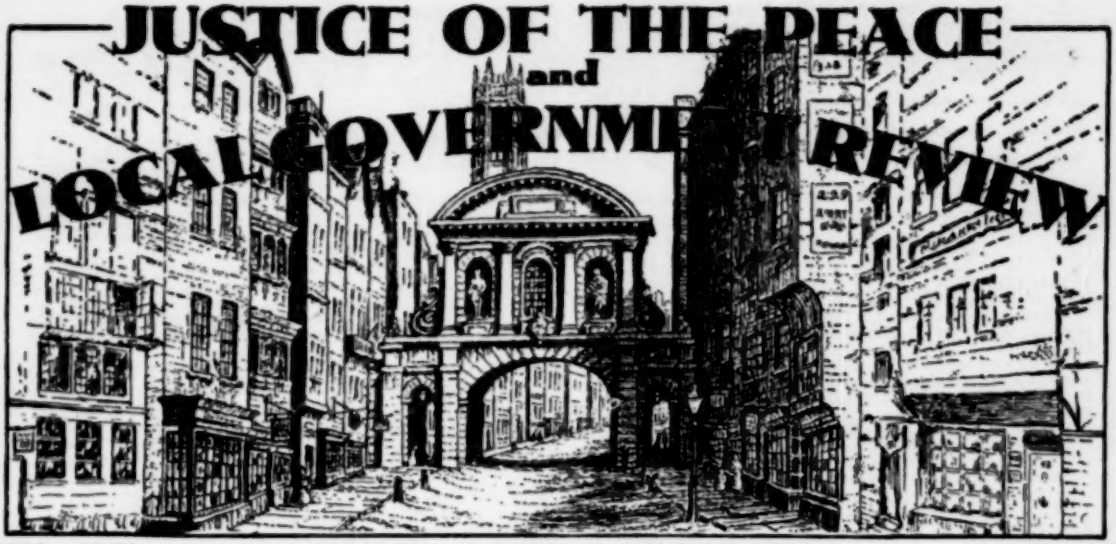

VOL. CXIV. LONDON: SATURDAY, JUNE 17, 1950. No. 24

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REPORTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

CITY OF LEICESTER

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with Grade A.P.T. VIII of the National Scheme of Conditions of Service (£685—£760).

The appointment will be subject to the National Scheme of Conditions of Service and to the Local Government Superannuation Act, 1937.

Applications, stating age, education, war service, qualifications and experience, together with copies of two testimonials, to be sent to the undersigned not later than June 24, 1950.

L. McEVOY,
Town Clerk.

Town Hall,
Leicester.

HORNCHURCH URBAN DISTRICT COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary within A.P.T. Grades V (£520-£570 per annum), Va (£550-£610 per annum), VI (£595-£660 per annum) or VII (£635-£710 per annum) of the National Scale of Salaries, according to qualifications and experience.

Conditions of appointment and application forms (returnable by June 23, 1950) can be obtained from the Clerk of the Council, Council Offices, Hornchurch, Essex.

The Council are not prepared to assist in the provision of housing accommodation.

P. L. COX,
Clerk of the Council.

Council Offices,
Billet Lane,
Hornchurch.

COUNTY OF DERBY

Appointment of Whole-time Probation Officer

THE Derbyshire Probation Committee invite applications for the appointment of a whole-time male probation officer to serve in the Eckington Petty Sessional Division of the Derbyshire combined probation area.

The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with the prescribed scale.

Applicants must be between the ages of 23 and 40 years except in the case of persons qualified under Rule 44. The selected candidate will be required to provide a motor car for which an allowance will be paid, and to pass a medical examination.

Application to be made, not later than July 1, 1950, upon forms to be obtained from the undersigned.

H. WILFRID SKINNER,
Clerk of the Committee.

County Offices,
Derby.
June 14, 1950.

WEST SUSSEX

Chichester Division

APPLICATIONS are invited for the appointment of assistant in the office of the Clerk to the Chichester City and County Justices. Applicant should be experienced in the general duties of a Justices' Clerk's Office, capable of taking Courts in the absence of the Clerk, able to keep magisterial accounts, court registers and other records, and take depositions. Shorthand and typewriting essential.

Salary in accordance with National Joint Council Grades A.P.T. Va-VI (£550-£660) according to experience. Superannuated post. Office in modern Court House.

Applications, stating age, particulars of experience, and copies of two recent testimonials (or names and addresses of referees) to be sent to the Clerk to the Justices, Court House, Southgate, Chichester, by July 1, 1950.

COUNTY OF GLOUCESTER

Petty Sessional Division of Gloucester

Appointment of Part-time Clerk to the Justices

APPLICATIONS are invited from duly qualified persons for the appointment of Clerk to the Justices for the Petty Sessional Division above-mentioned.

The present inclusive salary paid by the Standing Joint Committee is £600 per annum, of which £375 is allocated by the Committee for the Clerk, £187 10*s.* 0*d.* towards clerical assistant's salary and £37 10*s.* 0*d.* for overhead expenses.

The Committee provides certain books, registers and forms.

The Clerk is not the Collecting Officer for the Division but will become such when the relevant provision of the Justices of the Peace Act, 1949, is brought into force.

Applications, marked "Justices Clerk," stating age, qualifications and experience, should be sent to me at the address given below not later than June 30, 1950.

Canvassing, directly or indirectly, will disqualify.

H. H. VOWLES,
Clerk to the Justices.

6, Clarence Street,
Gloucester.

INQUIRIES

DETECTIVE AGENCY (HOYLAND'S) (T. E. Hoyland, **ex-Detective Sergeant**); Member of British Detectives Association and Federation of British Detectives. **Divorce,** Process serving, Observations, **Confidential investigations** and Status inquiries anywhere. Male and Female staff. **Over 150 Agents in various parts of the country.**—1, Mayo Road, Bradford. Tel.: Bradford **26823** day or night. Telegrams: "Evidence" Bradford.

CITY AND COUNTY OF KINGSTON UPON HULL

Principal Probation Officer

APPLICATIONS are invited for the above appointment at a salary of £625, rising by £20 per annum to £725. In the event of an applicant being appointed who is at present a principal, a deputy or an assistant principal, the commencing salary will be fixed, within the above scale, at a figure nearest to his present salary.

The appointment will be subject to the Probation Rules, 1949, and the duties of the officer will be those mentioned in Rule 50 of such Rules and such other duties as may from time to time be placed upon him by the Committee.

The successful candidate will be required to pass a medical examination.

Applications (endorsed Principal Probation Officer), stating age, qualifications and experience, together with copies of two recent testimonials, should reach the undersigned not later than Thursday, June 29, 1950.

T. A. DOUBLEDAY,
Secretary to the Probation Committee.

The Law Courts,
Guildhall, Hull.

FOR SALE

DUMSDAYS Local Government Law and Legislation. Complete set Annual Volumes 1899 to 1948 for sale; also number of duplicate volumes for certain years. All in very good condition. Offers invited. Reply Box A15, office of this paper.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

VOL. CXIV. No. 24. | LONDON : SATURDAY, JUNE 17, 1950 | Price 1s. 8d.

Pages 322-341

Offices : LITTLE LONDON, CHICHESTER, SUSSEX.

[Registered at the General Post Office as a Newspaper]

NOTES of the WEEK

Penalty for Non-appearance

We have received a report that at a magistrates' court recently a defendant was summoned for using a motor vehicle with the rear number plate not properly illuminated, and that the summons was heard in his absence and he was fined £6. The fine appears to be a very substantial one, but that of itself would not justify any special comment. What is startling is that the report goes on to say that the clerk was directed by the bench to tell the defendant by letter that the fine would not have been so large had he either written to or appeared before the court. To give point to this we are also told that at the following sitting of the court a defendant who did appear was fined, in similar circumstances, £1. The bench on this occasion was differently constituted, and due allowance must be made for the fact that different magistrates, including stipendiary magistrates, do take different views of the appropriate penalty to meet a given set of circumstances, but the margin between the two fines is so large that it might reasonably be inferred that a considerable part of it was meant to punish the first defendant for his disrespect to the court in neither writing nor appearing. We always hesitate to comment on any subject without having the opportunity of hearing both sides, but if the report we have received is an accurate one we think it should be said that there is no justification for penalizing in this way a defendant who fails to appear. There may have been good reason for this failure. He may have been taken ill or there may have been an accident, or he may have been sent elsewhere to work, and so on, and the bench cannot, so far as we are aware, have had any knowledge of why he did not appear. If they did not think the case could satisfactorily be dealt with in his absence they could have adjourned the hearing to another day; if a defendant appears and the bench is satisfied that he is considerably out of pocket because of having appeared that may well be a reason for imposing a smaller fine than would normally be imposed for such an offence, but we know of no justification for *increasing* a penalty solely because of a defendant's failure to appear, and we should not like to think that any court makes a practice of doing so.

Bigamy—Defence of Seven Years' Absence

A full court of the Court of Criminal Appeal (Lord Goddard, C.J., Humphreys, Stable, Cassels, Hallett, Morris and Parker, JJ.) has decided in *R.* v. *Taylor* (1950) *The Times*, May 23, that *R.* v. *Treanor* [1939] 1 All E.R. 330 was wrongly decided. This last cited case had decided that the defence in the proviso to s. 57 of the Offences Against the Person Act, 1861, was open to a defendant only on the occasion when he was charged in respect of a second ceremony of marriage and not when he was charged in respect of any ceremony subsequent to the second. It has now been decided that the defence is available on every occasion when a person is charged with bigamy, and therefore if he can establish that at the time of the ceremony in respect of which he is charged his lawful spouse had been continuously absent from him for the seven years then last past and had not been known by him to be living within that time, he cannot be convicted, even though that particular "bigamous" marriage may be one of several he is alleged to have contracted.

R. v. *Taylor* is of interest in that it is an example of a decision of the Court of Criminal Appeal being overruled by that Court, and this aspect of the matter is referred to by the Lord Chief Justice.

The De-rationing of Petrol

The Motor Spirit (Regulation) Act, 1948 (Expiry) Order, 1950, and the Motor Fuel (Decontrol) Order, 1950, give effect to the decision to take petrol off the ration. The former contains certain provisions which should be noted. The expiry of the Act on May 27, 1950, is not to affect its previous operation or anything duly done or suffered thereunder, or to affect any penalties and punishments, liabilities and forfeitures incurred thereunder or any legal proceedings in respect of such penalties and punishments, etc. Pending proceedings may be instituted and continued as if the Act had not expired. But it is provided that after the expiry of the Act no disqualifications, disabilities or forfeitures shall be imposed on dealers (under s. 4) or on private car owners (under s. 5) and that any such disqualification, etc., previously imposed shall cease to have effect. Any driving licence which had become ineffective because of the provisions of s. 5 (4) is on a demand in writing by the holder to be returned to him by the council in whose possession it is and to become effective again for any part of its term which has not expired.

Measuring Bad Behaviour

Statistics can be used in various ways and those who do not like them sometimes say that they can be made to prove anything. They are certainly dangerous if quoted indiscriminately and without reference to relevant facts which may be necessary to give a proper balance, but they do supply information which is often essential and which cannot be otherwise obtained. Mr. A. M. Struthers, O.B.E., B.Sc. has produced under the title "measuring bad behaviour" an analysis of criminal statistics which is published by the National Council of Social Service at a price of 1*s*. In the introduction the author states that "an attempt will be made to show that statistics do pro-

vide rough measures of different aspects of bad behaviour, and the only means of avoiding wild guesses about the extent of our changes in delinquency." The booklet deals with figures for England and Wales and for Scotland. Exact comparisons between the two sets of figures are impossible because of differences of classification in the two countries. Our readers will appreciate that as the booklet purports to be an analysis of the voluminous figures of criminal statistics published officially it is not possible to summarize it here. We can only say that those who get assistance by studying and comparing figures may find this analysis helpful in saving them the task of referring to much more voluminous figures.

Amending a Summons

We report at (1950) 114 J.P.N. 301, the case of *Rogerson* v. *Stephens*, in which a defendant was summoned for "using a motor vehicle and trailer on a road without having in force a policy of insurance in respect of third party risks." The defendant objected that there was no such offence known to the law that the motor vehicle and trailer did not form a single entity and that no policy of insurance is necessary for a trailer. The justices overruled the objection; but after hearing the case they dismissed it. The police appealed by case stated, and the High Court dismissed the appeal. They stated, however, that the justices were wrong in overruling the defendant's objection and that the information did not disclose any offence known to the law. The justices should have indicated that, if the prosecution so applied, they would amend the summons by striking out the words "and trailer." The justices' decision to dismiss the information was right, but for reasons different from those which they gave.

The importance of this case is that it shows once again that justices must not too lightly brush aside what may appear to them to be technical points without any real merit. The criminal law must be strictly interpreted, and a summons which is technically bad must be so treated. The justices must be on the alert, however, to see that justice is done, and must be prepared to take any proper steps (such as the amendment of the summons in this instance) to prevent a technical objection which has no real merit from defeating the ends of justice.

Probation in Kent During 1949

The annual report of the principal probation officer for the county of Kent is an elaborate document on which must have been spent a great deal of time and trouble. It gives the fullest possible information in a series of appendices which set out figures illustrating the probation and supervision work of each individual probation officer, the probation work of each magistrates' court, the matrimonial and kindred social work of each officer, and similarly of each court, the work of two liaison officers (who work in connexion with assizes and quarter sessions cases), the classification (girls and boys separately) of juvenile offenders with age groups, nature of case, treatment and social history, and finally a graph showing probation officers' case loads for the years 1940-49.

The Kent probation staff consists of thirty-six male and twenty female probation officers with twenty-six female clerks. This is contrasted with the position in 1908 when there were eight police court missionaries working in the county. Compared with the previous year the figures in all classes of the work show a slight falling off.

The report gives details of the duties of the two liaison officers who were appointed on January 1, 1949, for duties in connexion with the Kent Assizes and the East and West Kent Quarter Sessions, and it is stated that in spite of some difficulties which could be expected in the early stages it has been possible to lay good foundations of a real and effective service to the courts.

Probation in Essex in 1949

This is a most interesting and thought-provoking report. We should like to quote one sentence from it "a probation officer's tools of trade are a faith in human nature, a well-grounded philosophy of life and the ability to keep a sense of proportion." We would add to these the qualities of "leadership" which is hard shortly to define but which enables those who possess it to inspire others to trust them and to accept the help which a probation officer offers but cannot *force* his probationer to accept.

The staff of probation officers in Essex increased by two during the year to a total of twenty-three, fifteen men and eight women. The report makes it clear that the "housing" problem, which affects the whole nation in so many ways, adds to the difficulties of probation officers who often have to conduct interviews, many of an intimate character, in conditions which are wholly unsatisfactory for the purpose. The importance of an adequate number of clerical workers to relieve probation officers of routine office work and to facilitate the arranging of interviews (which it is urged should so far as possible be by appointment and not casual) is stressed and rightly so. A probation officer is specially trained for his particular duties and should be able to devote his time to them.

The principal probation officer urges the value of oral reports to case committees in lieu of written ones, and we are heartily in agreement with the views that he puts forward and his arguments in support. Indeed we think that many of them would apply in the case of probation officers' reports to juvenile courts, which in some courts tend always to be given in writing. Such written reports occupy much time in their preparation and in their subsequent reading by the members of the court, who have then to summarize them so that those affected by them know what they contain.

We haven't space to deal with the supervision, after-care and matrimonial work touched on in the report. The difficulties and importance of conciliation work in matrimonial cases are acknowledged. Figures are given showing the number of cases dealt with by probation officers in their various activities, those for each petty sessional division and borough being separately shown. The work of probation officers in the juvenile courts is also dealt with.

The report concludes with an acknowledgment of the debt due to public officials, voluntary agencies and private friends without whose help the probation officers could not satisfactorily do their work.

Supervisor as the Person in Charge of a Vehicle

An interesting decision of Sheriff-Substitute Cullen at Dundee has been brought to our notice. The point in issue is one which may well fall to be decided by any court of summary jurisdiction in this country. A father who was under the influence of drink was supervising the driving of a lorry by his son who held only a provisional licence. The father was charged as being in charge of a motor vehicle whilst under the influence of drink to such an extent as to be incapable of having proper control of the vehicle. The evidence showed that the son was in physical control of the vehicle and had driven for a short distance quite normally and without any untoward incident.

The Sheriff found the charge proved and fined the father £5, and endorsed his licence. No disqualification was ordered. On this last point nothing is said, in the report we have seen, as to the special reasons found by the Sheriff.

In giving his reasons for his decision the Sheriff said that his attention had been called to the English case of *Rubic* v. *Faulkner* [1940] 1 All E.R. 285; 104 J.P. 161, in which it was held that the supervisor has a positive duty to perform in preventing, so far as he can, any unskilful or careless driving by the learner. In considering the charge under s. 15 (1) of the 1930 Act he had to answer two questions; first had the accused a duty to control the driving of the learner, and second, if he had such a duty, was he thereby in charge of the vehicle. The Sheriff answered both questions in the affirmative. He thought that although a supervisor's duties are not defined he is required to exercise a continuous control over the learner's driving, and this duty is not interrupted because for the time being the learner is driving properly. At any moment an emergency might render proper supervision vital.

We respectfully agree with the decision thus arrived at. It involves, of course, that two people are at one and the same time in charge of a vehicle, the learner who is physically in charge and actually driving the vehicle, and the supervisor whose duty it is to see that the learner drives properly. But it seems to us that to hold that the supervisor is not in charge of the vehicle within the meaning of s. 15 (1) and that he can, while supervising, get drunk with impunity is to make nugatory the requirement that a learner shall be supervised by a competent driver. We shall be interested to hear of any similar case arising in England.

Exchequer Grants for Planning

A condition which we designated " important " when dealing with the Town and Country Planning (Grants) Regulations, 1950 (S.I. No. 88) has been varied by Amendment Regulations (S.I. No. 706), substituting a new r. 3. Originally, r. 3 (ii) required that " any negotiations for the acquisition of " certain land " shall have been carried out by the Valuation Office (of the Inland Revenue Department) and that any valuation of such land for the purposes of such acquisition shall have been made by that office." This was to be a condition precedent to payment of grants on expenditure for the acquisition of land in connexion with " blitz, blight and dereliction " under the Town and Country Planning Act, 1947, s. 93, and under s. 94 for various purposes. Now, by substituted r. 3 (ii) " an estimate of the cost of acquisition of " the land is to be obtained from the Valuation Office, and " compensation paid in connexion with the acquisition of any interest in such land shall not exceed the amount certified by the Valuation Office as properly payable." A somewhat similar substitution is made in r. 3 (iv); instead of the condition being that " negotiations for the settlement of compensation " payable under Part III (control of development, etc.) or Part VIII (special cases) of the Act of 1947 must " have been carried out by the Valuation Office," the condition is that " the compensation paid in respect of any claim " under those parts of the Act, and with similar exceptions, " shall not exceed the amount certified by the Valuation Office as properly payable."

These substitutions follow an assurance given by the Minister of Town and Country Planning in exchange for withdrawal of a motion in the House of Commons seeking to annul the original regulations, arising from representations made by the associations of local authorities and the London County Council. Thus, conditions disappear which were said by the mover of the motion to be " highly offensive to the self-respect of the local authorities great and small throughout the country," and negotiations will be conducted by local authorities' officers who are " in the best possible position not only to know the details about which they are negotiating, but what is perhaps even more important in negotiating, the people with whom they are negotiating." Precedent for other central departments was seen as " one of the most important reasons " against the original conditions, and the aspect which seemed to be " the most important of all " was that of the independence of local authorities. In the latter connexion it was said by the mover of the motion that " the consequence of loss of independence inevitably must be that authorities will not attract to their service men of the independence of mind and of position who are so desperately needed on local authorities."

The revised conditions involve a degree of duplication in that, according to the Minister of Town and Country Planning, " when the point of price discussion is reached, the district valuer is invited to give his view and, if he considers the price is fair, his certificate." A certificate could not ordinarily be issued without some investigation, varying in extent with circumstances, which would traverse ground already covered by the local authority. Doubtless, however, the knowledge that a second opinion would be bound to follow from a district valuer would tend to discourage persistence of vendors with excessive prices, and so strengthen the hands of a local authority in negotiations. Too much as regards devolution of responsibility to local authorities should not be read into the modification of r. 3 secured at the instance of the associations of local authorities. Nevertheless, there seems to be considerably more willingness in some quarters of central government to recognize that local authorities should be entrusted with as wide a range of administrative functions as possible for the purpose of maintaining vigour and effectiveness in local government.

Cycling on Metropolitan Footpaths

The council of a municipal borough which is within the metropolitan police district has raised the question whether it is precluded by s. 54 (7) of the Metropolitan Police Act, 1839, from making a byelaw under s. 249 of the Local Government Act, 1933, to forbid (under the rubric " good rule and government ") the riding of bicycles on footpaths, not being the footways along roads. Section 54 (7) of the Act of 1839 makes it an offence to lead or ride any horse or other animal or draw or drive any cart or carriage, sledge, trap, or barrow upon any footway or curbstone. There are two or three questions arising upon this. First, is a bicycle a cart or carriage? Secondly, what is meant by a " footway or curbstone." And thirdly, assuming that an offence is committed against the section, can that offence be dealt with, additionally or alternatively, by a byelaw under s. 249 of the Act of 1933? To take the first point, s. 85 of the Local Government Act, 1888, declared that for certain purposes a cycle was to be a carriage. In fact this had been held nine years earlier in *Taylor* v. *Goodwin* (1879) 43 J.P. 653, under s. 78 of the Highway Act, 1835. In *Williams* v. *Ellis* (1880) 5 Q.B.D. 175 the contrary was held under another Act, the court saying that the object of the statute must be regarded. The negative view, for the same reason, was taken in *Simpson* v. *Teignmouth Bridge Company* (1903) 67 J.P. 65 and *Smith* v. *Kynnersley* (1903) 67 J.P. 125; the positive view prevailed in *Reg.* v. *Parker* (1895) 59 J.P. 273 and *Cannan* v. *Earl of Abingdon* (1900) 64 J.P. 504. Etymologically the word " carriage " and the word " vehicle " mean the same thing and, turning from carriage to vehicle, we find that in *Ellis* v. *Nott Bower* (1896) 60 J.P. 760, the court held that bicycles were vehicles, within a local Act dealing with vehicles used for advertising, and in *Hansford* v. *London Express Newspaper Limited* (1928) 72 S.J. 240, Rowlatt, J., regarded the word " vehicle " as wide enough in its natural meaning to include a bicycle, and said that he saw no reason in the particular case to hold in relation to an insurance policy that it did not include a bicycle. We therefore have no difficulty in saying, upon the case law, that a cycle is a carriage in the present context. The second question may be a shade more doubtful, since there seems to be

no case law. The raising of the question assumes that the curbstone referred to in the section is what is nowadays called the curb, or kerb, *i.e.*, the edging of the pavement which protects the pavement from damage by vehicles, and is normally raised above the gutter at the edge of the carriageway. Hence the inference that s. 54 (7) applies only where the footway runs by the side of a carriageway. We have, however, a good deal of doubt whether it is the sort of curbstone to which the section refers. "Curbstone" in the section could well be the stone baulk which in the days of horse-drawn traffic was commonly built up at the foot of a wall to protect the walls against the wheels of carts. Sometimes one would find a timber baulk, for example on railway property where old railway sleepers were available, but a very general practice was to build it of stone, sometimes cemented over. This would be a foot or so in height and wide enough from front to back to prevent the felloe of a wheel from scraping against the wall; if a cart were driven carelessly it could ride up on the curb, damaging the curb as well as, perhaps, the wall behind it. If the subsection be thus understood, no ground remains for treating it as limited to footways by the side of the road: the "footway" mentioned, and the "curbstone" are different things. In P.P. 2 at 100 J.P.N. 366 we gave other reasons for holding that the word footway in the subsection is used comprehensively. This brings us to our third question, whether this wide application of the subsection precludes the making of a byelaw for good rule and government, even within the metropolitan police district, to deal with bicycles on footways. It is a general rule of practice in those departments of government which are concerned with byelaws, not to confirm a byelaw which covers the same ground as a statute; this is a good rule if only because of the danger that the byelaw may say something inconsistent with the statute, and so be invalid as being in conflict with the laws of England. There are, of course, other reasons. But there is no absolute rule of law that a byelaw cannot deal with matters already dealt with by statute. If, indeed, there were such a general and absolute rule of law, s. 249 (4) of the Local Government Act, 1933, would have been unnecessary. That subsection can be best understood by reference to its pedigree. In effect it re-enacts part of s. 23 (1) of the Municipal Corporations Act, 1882, which authorized the making of byelaws for good rule and government, and for the prevention and suppression of nuisances "not already punishable in a summary manner by any Act in force throughout the borough." Although a variety of wrongful acts upon the highway are spoken of in text books and in case law as being highway nuisances, it is certain that riding bicycles on the footway or the other Acts referred to in s. 54 (7) of the Metropolitan Police Act, 1839, are not "nuisances" within the meaning of s. 23 (1) of the Act of 1882, as now reproduced in s. 249 (4) of the Act of 1933. It is to be observed that byelaws for the prevention and suppression of nuisances made under s. 23 of the Municipal Corporations Act, 1882, required confirmation by the Local Government Board: *see* s. 187 of the Public Health Act, 1875, and s. 23 (6) of the Act of 1822, whereas byelaws for good rule and government did not under the Act of 1882 require confirmation at all. The point here is that dichotomy between good rule and government byelaws and byelaws for the prevention and suppression of nuisances was complete, and that the words "not already punishable in a summary manner" which are reproduced in s. 249 (4) of the Act of 1933 had nothing to do originally with byelaws for good rule and government. They still have nothing to do with byelaws for good rule and government, being tied to the second limb of s. 249 (1). A local authority is therefore free to make, and the Secretary of State, if so minded, is free to confirm byelaws for good rule and government prohibiting the riding of bicycles on footpaths within the metropolitan police distict, as well as outside it, notwithstanding s. 54 (7) of the Act of 1939. Whether he will confirm such byelaws is another matter. Where the boundary of the metropolitan police district goes through the area of a byelaw-making authority, it would be strange to have a byelaw prohibition upon so much of the footpath as is outside the metropolitan police district and a statutory prohibition, a hundred years old, upon the remainder of the footpath. If, however, any local authority is minded to make such a byelaw, applying within the metropolitan police district, it would be wise to limit the penalty to 40*s.* so as to avoid inconsistency with the opening words of s. 54 of the Act of 1839.

WHERE GOES PROBATION?

It is often said—often enough to need no elaboration here—that public opinion and its legislative expression have tended in the last seventy-five years towards acceptance of the reformative purpose of punishment, and that of all modern methods of dealing with offenders probation is the only method which is almost entirely reformative in aim. But while it is true that probation retains this characteristic, there is discernible within the probation system a distinct change in the method by which it is sought to achieve reformation—so great a change that its early exponents would scarcely recognize probation as now practised as that which they used themselves. There has been a trend within a trend, which has now gone so far as to alter completely not only the methods used, but the qualifications needed in those who use them and the conditions in which their use is likely to be successful.

In the days when the only legislative step which had been taken towards a probation system was the power to bind over under s. 16 of the Summary Jurisdiction Act, 1879, the theory seems to have been that the shock of detection and conviction of wrongdoing might in itself be sufficient to induce penitence. The first Police Court Missionaries had already been appointed, and although the use of their services was not given statutory recognition for many years, their services were used, in conjunction with "binding over," to reinforce and maintain over a period the offender's consciousness of wrongdoing and his resolve to avoid further offences. As the numbers and prestige of the missionaries grew, and even after their work had received recognition in the Probation of Offenders Act, 1907, this conception of their task prevailed. Though the word *supervision* was now used, implying a greater reliance on external influence in inducing a change of heart, the use of probation still had as its basic justification the belief that by working directly on the will of the offender the probation officer could induce him to desire and determine to withstand temptation. In other words it was believed that by the shock of conviction and the exercise of mercy and in addition the influence of a stronger and better personality, the human will could be so guided and strengthened that the same man in the same conditions would do right where he had once done wrong.

Experience soon showed what now seems self-evident—that in bad social and economic conditions a man is more likely to commit offences, and that in better conditions he is more likely to avoid them. Missionaries and probation officers quickly found out that their influence was more effectively exercised if they first took steps to improve the material conditions of the probationer, where these were bad, or to straighten out any complications in his domestic or other relationships which might overshadow in his mind his duty to the society in which he lived.

For a long time, however, there was no question that the work of the probation officer in these matters was merely ancillary to his main purpose of reform by the exercise of personal influence. The recognizance which was the legal basis of probation lent colour to this view. By the act of entering into a recognizance the probationer undertook to change his behaviour : the function of the probation officer was to " advise, assist and befriend him " with the object of keeping his undertaking in mind and making it easier for him to keep it.

As time went on, though until recently the law remained unchanged, more and more importance was attached to the social rehabilitation of the probationer and less and less to his change of heart. Research into, and speculation on, the causes of crime have revealed that there is a great variety of conditions the existence of which makes crimes more likely to be committed. The more widely known these conditions become, the greater the amount of work that is directed towards their alleviation, and the less, proportionately, towards the exercise of direct personal influence. In these circumstances the probation officer must of necessity make increasing use of the social agencies to effect his purpose : he needs knowledge of and contact with child guidance clinics, hospitals, marriage guidance councils, clubs, employment exchanges, employers and all the local institutions, voluntary and statutory, to whom it may be necessary to refer one or other of his probationers for help. He must not only know them, but be known to them and enjoy their confidence, and the more he succeeds in this the more does his work tend to approximate that of a consultant and the less to that of a general practitioner.

The abolition by the Criminal Justice Act, 1948, of the need for a recognizance in connexion with a probation order may not have been directly related in the mind of the legislature to this change in the probation method, but there is no doubt that its acceptance was made easier by the change. If probation is thought of more as a means of doing something for the offender and less as a means of persuading him to see the error of his ways, it is obviously less appropriate to require him to enter into a solemn undertaking. Conversely, the abolition of the recognizance lends colour to the conception of probation as rehabilitation from without, rather than a directly induced change of mind within.

It is the increasing acceptance of psychological theory, however, which has probably had most to do with public acquiescence in the new practice of probation. Broadly speaking, the tendency of all psychological creeds is to belittle the importance of free will and to emphasize the significance of environmental and hereditary influences, and the readier we are to ascribe the offence to such influences, the more natural does it seem to direct the probation officer's main effort towards changing them. This being the case, the probation officer needs to be, and often is, well versed in psychological theory.

In this way we have reached the position that the main qualification of the old missionary—to quote the old Probation Rules, " a strong character likely to influence for good . . . " — is no longer sufficient for the modern probation service. The modern probation officer must have a sociological and psychological training and the kind of personality which will enable him to secure for his probationers the benefits which, because of that training, he believes they need. These new qualifications are in themselves not common, and it is not to be expected that many of those in whom they are found will also have the qualities of the missionary. Nor is it likely that the outstanding person in whom the two sets of qualities were united would be available at the prescribed age for appointment as a probation officer : more probably, he would already have embarked upon a career in some other field, no less satisfying and considerably more lucrative. The result must be faced that in choosing between candidates for appointment as probation officers it will be necessary to plump for one kind of qualification or the other, and rarely possible to obtain both : and that it is the " old-fashioned" qualifications which are more likely to be dispensed with than the new. It is perhaps significant that the reference to " a strong character likely to influence for good " is no longer to be found in the Probation Rules. Moreover, the rapid expansion of the probation service during the past ten years has placed the new kind of probation officers in a majority over the old, so that the composition of the probation service tends towards the acceleration of the change in method.

It is not, of course, suggested that the spirit and methods of the missionary officer have entirely disappeared. Some members of the old school are still serving, and some of those more recently appointed either were imbued with the old spirit from the start or have become infected by it as they worked. In the probation service as a whole, however, it cannot be denied that the change in emphasis from personal influence to rehabilitation is becoming increasingly evident.

How far this progression is to be allowed to go is a question which has not yet been openly considered, but which will have to be considered if we are to avoid an increasing conflict between public opinion and probation practice. Already some conflict is discernible between the way in which courts speak and think of probation and the way in which probation officers practice it. When a court makes a probation order, even under the new provisions, it still puts probation to the offender as a means of influencing his will, and implies that the basis of its order is his undertaking to do better. But if, leaving the court on this footing, he finds that his probation officer regards him as the victim of circumstances or psychic disorder, he will be only too ready to agree, and neither he nor his neighbours will retain much respect for the court's view of probation. In effect the court will be prescribing and the public acquiescing in one kind of reformative treatment, while the probation officer will be administering quite another.

It is still for the courts to decide what kind of treatment is to be applied, but there may come a time when they find that what they mean by probation cannot be applied, because there are no longer available probation officers who have the desire, or the qualities needed, to provide it. They will then have to choose in each case between not using probation at all, and using the kind of probation for which the modern probation service provides, and they may well choose the former alternative. If this does happen, and it is found that there is a falling off in the use of probation, it will be because the development of the probation method has outstripped the development of public opinion about probation.

Such an outcome would be disastrous because it would mean a reversion to non-reformative methods of punishment, from which public opinion has been weaned slowly and with great difficulty. An increasing use of fines and of short sentences of imprisonment may be a sign not of loss of faith in reformative punishment but of disbelief in the particular form of reformative treatment which happens to be available. To avoid this reaction, it seems essential that we should now halt and examine probation, with a view to deciding how far we wish to go in dropping the old methods and taking up the new. When some conclusion has been reached on this, it may be possible to define more clearly both the legal purpose of probation, so that the courts may know when to use it, and the qualifications required in probation officers, so that those who appoint them may choose the right persons to carry out the courts' wishes—which are or should be the wishes of the community.

SHOULD BOROUGH QUARTER SESSIONS BE ABOLISHED?

[CONTRIBUTED]

The question of the retention or abolition of borough quarter sessions is one which has exercised the mind of Parliament during the past few months. The Honourable Members have keenly debated the point and special mention has been made by individual members to particular borough quarter sessions held in their constituencies. A great deal of argument has ensued resulting in the retention of many of the quarter sessions which were originally to be "axed."

In the Justices of the Peace Act, 1949, separate commissions of the peace have been granted to every county, county borough and non-county boroughs which (*a*) at the end of December, 1948, had a separate commission of the peace and a population of 35,000 or over; (*b*) at the end of that month the borough had a separate commission of the peace and court of quarter sessions and a population of 20,000 or over; (*c*) at the end of that month the borough had a separate commission of the peace and court of quarter sessions, and the Lord Chancellor makes an order under s. 10 (5) of the Act saving the grant to the borough of its commission and quarter sessions; (*d*) after the passing of the Act His Majesty grants a separate commission of the peace to the borough. With regard to the Lord Chancellor's powers mentioned in (*c*) above he can make an order (i) if the borough council applies not later than two months after the date of the passing of the Act or within such further time as the Lord Chancellor may allow, and (ii) he is satisfied that it is desirable to save the grant to the borough of its commission and quarter sessions on account of the assistance the borough court of quarter sessions has given or is likely to be able to give in the administration of justice in the county which includes the borough and of historical or geographical reasons.

From the above it will be seen that although the primary object of the Act appears to be to abolish a very large number of quarter sessions, in fact the provisions are so wide that all *can* be retained. Indeed many that were originally intended to be abolished have in fact been retained, some of them apparently very ably assisted by the gifted eloquence of certain members of Parliament.

Surprisingly enough, tremendous stress has been laid on the factor of tradition, and the broad argument that a borough has been the proud possessor of its quarter sessions for hundreds of years seems to have been found a justification for its continuation. There is no doubt at all that a house built on a rock will stand the test of time far better than that built upon sand, but the house must be modernized if it is to keep abreast of the times. Otherwise it might fall into decay. While it is not proposed to show bias in this article either for or against the borough quarter sessions, neither is it proposed to argue that tradition is of itself sufficient for retention, particularly as one so often finds that the only reason a borough has a quarter sessions is because it pleased some reigning monarch many years ago. Any body which deals with the liberty of the subject should be given the closest scrutiny and regardless of whether it is ancient or modern should be retained only upon its merits.

It will be agreed by all that under our present legal system those boroughs which boast of long calendars each quarter or adjourned session will, of necessity, have to be retained. They cannot be abolished unless and until a new type of legal administration is propounded.

What are the arguments for and against the remaining borough quarter sessions. The writer is aware of at least one sessions which sits about once in five years, and of another which deals with an average of no more than six cases a year.

The majority of these smaller sessions have four sittings per year, namely, each quarter, as the name implies, and are primarily there to deal with indictable cases committed within their own borough boundaries. They can, of course, deal with indictable cases committed outside their boundaries, but in the majority of courts this seldom occurs as there are usually county or other busy quarter sessions sitting more frequently than four times a year to which those cases are committed.

In the first instance, no doubt all would agree that the question of expense is not the most important, but it is a point to be considered. It is difficult to generalize on this matter, but taking the borough quarter sessions which are not overloaded with work, it would probably be correct to say the amount paid by the taxpayer is almost negligible. In other words individual borough quarter sessions could not be considered a waste on the purely financial side, but, of course, a large number of such borough quarter sessions up and down the country might be considered an unnecessary expenditure especially if there were an alternative method of dispensing justice in a manner satisfactory to the public conscience.

From the point of view of the barrister, he sees in the quarter sessions the possibilities of a recordership with its consequent prestige and possible elevation to a higher office, but despite this purely individualistic outlook, a number of the writer's barrister friends are against the continuation of borough quarter sessions in certain places.

The clerk of the peace holds a paid appointment, and with the greatest respect to those officials, the appointment is not made solely on a person's knowledge of criminal law and procedure. This is not necessarily a bad thing, and in any event great difficulty might sometimes be encountered to find some really qualified person willing to do the job for what amounts to a nominal salary. The word "qualified" is used in the sense of meaning a person who is continually dealing with criminal law in one way or another.

At first sight it would appear that jurors would be in favour of keeping their borough quarter sessions on two grounds: (1) travelling would be negligible (2) the work so small, that only an hour or two is lost to the business man. The alternative would be that the borough jury would become liable to service at some other court of quarter sessions probably many miles away, and might also involve a full day, perhaps more, away from business. The fact is, however, that it does not always work out quite so much in favour of the local jury as would appear at first sight. There are borough quarter sessions which deal with a mere handful of prisoners each year, almost invariably pleading guilty. A large number of persons are called to serve on the jury on each occasion on the ground that it is always possible that a prisoner will plead not guilty. If that type of borough quarter sessions were abolished, persons liable for service would find themselves being called to the county quarter sessions, but much less often than hitherto and would at least have the satisfaction of knowing they would almost certainly try a case. However, the argument has two sides, both with merit.

Local witnesses, including police officers, have less distance to travel by going to borough quarter sessions, and consequently

do not use up so much time as they might otherwise do if they had to attend some other quarter sessions. On the other hand a well conducted quarter sessions with a large calendar, will invariably bring all prisoners up to plead only on the first day, thus necessitating only the attendance of the police officer in charge of the case. Those prisoners pleading guilty, are usually dealt with, and those pleading not guilty, put back for their trials to be held on some other day. The result of this is that neither jury nor witnesses need attend the first day of quarter sessions, and in the cases of pleas of guilty, witnesses will never be required, whilst the attendance of the jury has been shortened and in some cases dispensed with altogether.

These seem to be solid grounds upon which an examination of individual borough quarter sessions should be made. Surely it is more appropriate to decide whether borough quarter sessions should be retained in the light of modern needs rather than the doubtful blessings of a royal but ancient gift.

In our county there is no less than twelve borough quarter sessions, each having dates for sittings on four occasions each year. Needless to say they do not all sit on every occasion. In addition there is the county quarter sessions which sits fifteen times a year and always has plenty of work to do. The county quarter sessions sits each quarter as do the boroughs, but also sits as adjourned sessions. In consequence of this it takes a number of borough quarter sessions cases which would otherwise have to wait perhaps six or eleven weeks for trial. The same sort of conditions apply in other counties although perhaps to a lesser degree. At first sight this again may seem a reason for the abolition of borough quarter sessions, but how different the picture would look if the boroughs sat more often and thereby took *all* their committals.

This article does not take into account the possibilities of an entirely new system, but is only meant to deal with conditions as they appear today.

Presumably the arguments will go on, swaying one way then the other, and it is a great pity the Government has not found it possible to give a firm lead to a definite policy. There is no doubt we should not all be satisfied, but we should at least have a solid basis upon which to work.

"PROSECUTOR."

CHIEF CONSTABLES' ANNUAL REPORTS, 1949

(*Continued from p. 312 ante*)

21. OXFORD

The population is 105,150 and the area 8,438 acres. The establishment is 161 men and two policewomen; the actual number engaged at the end of the year was 107 men and two women. In 1948 there were 109 men and although nine constables were recruited last year there were eleven resignations, three on pension. Sixty-two applicants were dealt with, but except for nine men all were below the required standards in education or physique, or were otherwise unsuitable. Promotions included one to inspector and two to sergeant's rank. Sickness accounted for 786 days, an average of seven days per man; this was a decrease of ninety-eight days compared with the year before. "By the terms of the National Health Insurance Act members of the force may choose their own doctor. A large proportion have chosen the police surgeon, who continues to attend headquarters daily to see patients."

The report continues: "For the purpose of record it should be noted that the University marked the completion of twenty-five years' service as chief constable (of Mr. C. J. Fox) by admitting him as Master of Arts." The deputy chief constable (Supt. L. Quelch) was awarded the King's Police Medal in H.M. New Year Honours, 1949.

Civilian staff authorized to be employed are: one senior clerk, two shorthand typists, five clerk typists, three cadet clerks, three telephonists, one motor mechanic, a cycle mechanic and two garage attendants. Fifty-seven ex-members of the force are now in receipt of superannuation.

Special constabulary personnel number eighty-eight of which seventy-seven are uniformed. With the shortage of regular men the special constabulary have again proved most useful. Contingents paraded on the occasion of the municipal elections, Eights Week, St. Giles' Fair, and Fifth of November celebrations. The monthly instruction classes have been well attended.

Crimes numbered 1,693 including eighty-eight cases of unlawful taking of motor vehicles. In 1948 there were 118 less crimes. Detected offences amounted to forty-five *per cent.* Breaking offences numbered 162 against 187 in the previous year. "... Criticism applies to the owners of motor vehicles who so frequently, and in spite of repeated warnings, leave them for long periods unlocked and with the ignition key in position ... ninety-three cars were taken and in addition there were ninety-seven thefts from vehicles." Property stolen was valued at £15,946 and recovered £4,714. The increase in crimes charged against juveniles is mainly accounted for by forty cases of shoplifting for which a party of children were responsible. The figures for 1949 and the previous three years are: 172; 120; 140; 91.

Street accident casualties for the year were: eleven killed and 459 injured; in 1948, nine people were killed and 407 injured. In 1946 there were sixteen fatalities and 378 people injured. "Most of the cases in which pedestrians were involved showed on the evidence that they were largely to blame."

There are 235 licensed premises in the city and sixty-one registered clubs with a membership of 35,227, exclusive of the University clubs which are registered with the Vice-Chancellor. Nine persons were charged with drunkenness and there were six cases of driving whilst under the influence of drink.

Twenty-four houses are owned by the police authority and a number of additional dwellings are to be built for members of the force.

22. NORTHAMPTON

The population is 104,380 and the area 6,201 acres. The official strength is 158 and there are thirty-seven vacancies; in addition twenty-four civilians are engaged as clerks, telephone operators, engineers, cleaners and canteen staff. Resignations numbered fifteen, seventeen to go on pension and the remainder with periods of service too short to be pensionable. Fourteen probationers were appointed including three policewomen. Promotions made during the year were four men to sergeant's rank. A delegation representing German police authorities were the guests of the force for some days. The net expenditure during the financial year was £97,056, compared with £91,696 the year before. The Exchequer grant amounted to £47,323 against £43,924 the year before; the net charge on local rates was £49,733; in 1948 it was £47,772. Days lost through sickness totalled 1,739, a decrease of seventy-one days over the year before. There are now 105 ex-members on the pension list.

Five policewomen, including one sergeant, conducted 627 interviews, took 266 statements, made 499 inquiries and carried out duties in connexion with the arrest, search and detention of females; investigations in relation to lost children, and a very large number of miscellaneous matters. For 368 hours during the year women members of the force kept observations in plain clothes regarding indecency, thefts and shop-lifting.

Applications to join the service were received from forty-five persons compared with seventy-six in 1948; of this number fourteen were accepted. Failure to pass the educational or medical examinations accounted for most of the remainder.

Crimes recorded totalled 732; in 1948 there were 900 and in 1939 indictable offences numbered 698. Two hundred and nine persons were proceeded against for crimes, a decrease of ninety on the year before. Eighty-two juveniles were charged with criminal offences and fifty-two with non-indictable offences, thirty less than in 1948. Detections amounted to fifty-nine *per cent.* Stolen property was valued at £10,412 of which £1,279 was recovered.

During the year there were 708 road accidents compared with 698 in 1948. There were six people killed and 259 injured against ten fatalities and 214 the year previously.

Three pairs of houses have been erected and arrangements are in hand for further building; a single men's hostel was opened during 1949.

Licensed houses number 364 and there are thirty-six registered clubs with a membership of 19,193. Forty-five males were charged with drunkenness, an increase of nineteen; nineteen were vagrants and had been drinking methylated spirits.

The establishment of the special constabulary is 300 and the actual number engaged is sixty-one; eight were enrolled since the national recruiting campaign. The mobile section of this corps numbers forty.

23. LINCOLN

The population is 66,243 and the area 6,128 acres. The authorized establishment is 113 men, two women and one temporary inspector additional to establishment; the force is up to strength. During the year ten constables were appointed, three resigned and two men retired on pension. Five men were promoted, one to superintendent, two to inspector and two to sergeant's rank.

Crimes committed numbered 657 and seventy-six *per cent.* were detected; 135 of the offences were committed by juveniles. The value of property stolen was £7,233 and the amount recovered £3,348. In all, 204 persons were charged with criminal offences. Fifty-six boys and eight girls under fourteen years and twenty-six boys and one girl aged between fourteen and seventeen years were dealt with by the juvenile court.

Sickness accounted for 1,288 days lost by forty-five men and 100 days by policewomen, an increase of 184 days over the 1948 figure. The total cost of the police for the financial year was £68,704 and the amount borne by the rates £32,963.

Road accidents numbered 383, an increase of forty-six compared with 1948. Four people were killed and 146 were injured, as against seven fatalities and 137 injured the year before. Thirty-five children were injured and one child killed during the year.

There are 178 licensed houses and thirty-two registered clubs. Twenty-six persons were charged with drunkenness, seven more than in 1948. One charge of drunkenness whilst in charge of a motor car resulted in conviction and four persons prosecuted for drunkenness had taken methylated spirits.

(To be continued)

LOCAL GOVERNMENT REFORM

(Concluded from p. 314 ante)

We said at the outset of these articles that there had been attempts to deflect the chase by drawing red herrings across the trail. Some we have noticed already; another is introduced by Mr. Eric Fletcher, M.P., writing in *The Times* on the subject of the control of local government finance. One of the salient features of local government today is the extent to which its revenues are derived from the central government. This has been picturesquely expressed in the remark that central government puts itself in the position of a large ratepayer in every rating area. It is a truism in government as in other matters that he who pays the piper must be allowed to call the tune. Forty *per cent.* and upwards of local government expenditure being provided by the Exchequer, it is evident the central government must exercise a great measure of control over the expenditure of local funds. No chancellor of the Exchequer could consent to bear the burden of adding to the income tax, to the tobacco duty, and so forth, for the sake of providing money which would be spent by locally elected bodies according to their own ideas or the ideas of their constituents. He must in one way or another, through the Treasury or through the departments of government which make grants in aid of various services and sanction loans, ensure that his voice is heard in the spending of money, which he provides and in due course will have to raise from the taxpayers at large. This is not to say that the methods hitherto followed for preserving control of expenditure have been the best adapted for their purpose. There have been times when they have seemed hardly worthy of any intelligent body of men, but to say that the machinery of Treasury control ought to be made more imaginative is not to say that it ought to be withdrawn. The member of Parliament we have mentioned as writing to *The Times* is of course aware of this; his remedy would be, we gather, to alter the system so as to reduce the proportion of local expenditure contributed from central funds; a reduction which could be brought about in one or both of two ways, but in those alone. That which, broadly speaking, would be preferred by old-fashioned individualists would be to reduce the objects of expenditure. The other, obviously preferable in the eyes of adherents of the welfare state, would be to enlarge the field within which local authorities can raise money locally without falling back upon the taxpayer. Hence the suggestions now being made, of abandoning local rates as hitherto known, or of retaining them and supplementing them not only with rates from land values but by a local income tax, or the continental plan of allowing a local authority to add such and such a percentage to the tax levied by the central government upon the taxpayer.

This article is not the place to examine the pros and cons of any of these notions. We are concerned here only to call attention to them, as possible diversions in the hunting of Sir Malcolm Eve's hare by Professor Robson and any others who wish to join in the chase. There is, however, a different aspect of the control exercised by a central authority, based chiefly

on finance but not exclusively. This, as propounded in *The Times* by one of the committee chairmen of the London County Council, is not the same as Mr. Eric Fletcher's aspect. It is, stated shortly, that in order to save duplication of work it ought to be enough to let projects for expending public money be handled by a single set of professional advisers. Efforts are, as our readers know, at this moment being made to get as near as possible to this result, as part of the governmental effort to cut down duplicated work in the interest of man-power. We think, however, that if the notion were completely and logically followed out it would tend against, not in favour of, greater scope for local government, by which the writers mean government by locally elected persons. Into transactions of this sort the intrusive factor is not, really, the central government and its officials in Whitehall or at regional headquarters, but the elected local authority or its responsible committee. What we mean is this. Where a local authority is spending its present ratepayers' money without imposing a charge upon posterity, for example where it effects improvements in the public parks and charges the cost to annual revenue without having to borrow, it need not concern itself about the views of the central government or consult the expert advisers of the central government. Similarly where the original administration of a service like the Post Office is in national hands, and its local staff are carrying out a project of engineering or development, they will do so subject to whatever measure of control from London is normal and appropriate to the particular enterprise, without needing to satisfy locally elected persons. In this latter case the local officers of the department concerned know just what measure of autonomy has been entrusted to them, and know from the outset that beyond that measure of autonomy they must obtain instructions and guidance from their London office. There is no duplication of effort because, in the last resort, the Postmaster General (or as the case might be) is responsible to the Treasury and to Parliament for everything that is spent. The machinery of duplicated control came into local government at the point where it ceased to be practicable for local authorities to do what they wanted to do from yearly revenue. It was early recognized that elected persons were under a temptation to do something which would be popular at the moment, and leave posterity to pay for it—which is only a translation into the sphere of government of a normal incident of human nature. Every human being is exposed to the temptation of acquiring something immediately satisfactory, and running into debt to pay for it: the gigantic edifice of hire purchase has been built upon this foundation, and indeed commerce could not be carried on at all if the directors of commercial undertakings had to pay cash for the whole of their supplies. It is because of the temptation to which councillors, in common with householders and company directors, are exposed, the temptation of doing lavishly today what will have to be paid for tomorrow, that in the nineteenth century Parliament precluded the raising of loans by local authorities without the sanction of the Local Government Board or other central department. The primary purpose was to ensure that the local authority's financial position was not unreasonably weakened, and that a future generation was not exposed to charges for something from which it would no longer be deriving benefit. Parallel provisions were those of the Municipal Corporations Act, 1882, under which Treasury sanction, afterwards changed to that of the Local Government Board, was required for the disposal of land. English history has plenty of precedents indicating the danger of unrestrained disposal of publicly owned land, in order to meet a current financial emergency. It was a more or less accidental concomitant of the financial control introduced for this purpose, that the professional advisers of the central government, whose primary duty in regard to loan sanctions was, for example, to satisfy themselves that proposed works would last throughout the period of the contemplated loan, have taken the opportunity to point out to the advisers of local authorities details of the latter's proposals which they thought could be improved. Those concerned in local government have no reason to deny that, in the early years of this century, when local authorities before and soon after the Housing, Town Planning, &c., Act, 1909, were really getting going with housing and the development of land, the advice of the architect's department of the Local Government Board, even upon matters which did not affect the financial aspect of loan sanctions, was helpful by way of improving the standard of working class housing, and making known to local authorities generally what had been learned by experience elsewhere. Nor is this confined to the housing of the working classes. An immense amount of information about water supply, about new experiments in road making, and about the behaviour of materials for many purposes, has been disseminated to the general benefit amongst the advisers of local authorities, through the necessity of showing their plans to a central department of government in order to obtain sanction to a loan. Against these gains it can, however, be said fairly that two of a trade never agree on all points, and there was therefore always room for disagreement and consequent delay, if the advisers of the central department were disposed to go out of their way and suggest this and that merely for the sake of detailed improvement of what was put before them. Now this process, of suggestion and the sending to and fro of plans with projects, would have been much easier and quicker, would in fact hardly have involved friction or delay, if the persons concerned with the original framing of the projects and drawing of the plans had been employees of the central government. The consideration of what they proposed would have been part of the normal process of departmental responsibility. The complication ensued from the fact that, if the architect or engineer advising the local authority was convinced by the architect or engineer advising the Local Government Board or other department in Whitehall that some improvement could be made in the plans originally prepared, whether he was convinced against his will or in his heart, he had to go back to the local authority or a committee of the local authority, and explain to them that he was now desirous of making an alteration in what they had already agreed. There was, no doubt, an infinite variety in the application of this process: some local authorities would be more interested in detail than others; in some cases the local engineer and the Whitehall engineer could get together and agree upon modifications without difficulty, whilst in other cases the local engineer had to go back to his own employers and lose face by arguing with them in favour of a new thesis which he might or might not have willingly accepted. The more experienced administrators, central or local, realized the possibilities of friction and were concerned to reduce them, so that when things were working at their best it might be hardly realized that duplication was involved. The process was, however, necessarily apt to produce some friction, and this could come about without malice aforethought on either side. The position was made worse in course of years, when an increasing volume of expenditure upon works to benefit the inhabitants of particular localities came to be charged, through grants of one form or another, upon public funds. The professional officers locally and centrally concerned were much the same men as they had been when it was only a question of safeguarding local solvency, but the central government's advisers now had the duty of safeguarding not merely the future ratepayers of a particular locality but also the present taxpayers, with the Treasury and the Public Accounts Committee of the House of Commons not far in the background, and here

comes in yet another complicating factor. The simple way of cutting out these complications would be to cut out locally elected bodies—which is just the opposite of what is desired by those who have brought up this aspect of the matter. The second world war put local government officers into the position of agents of the central government in certain matters, a curious and sometimes embarrassing relationship for which tact was needed—for example in civil defence and in the requisitioning of property. It would be feasible for everything which has to be done locally to be done by agents of the central government, just as income tax is so collected. It is only just over a century that the form of local government has been even partially what it is at present; in earlier generations elected bodies came into existence largely because of the difficulty, in times of poor communications, of controlling distant agents of the central government. If elected bodies be retained, this can be simply because they already exist. Or locally elected bodies can be justified on the ground that they provide the best way of assuring for the duty of government a good deal of enthusiasm which would otherwise be wasted: the darker sides of that enthusiasm are seldom noticed by people who adopt this argument, though the same people are often prompt to call attention to those darker sides when speaking of the United States, or of Germany between the wars. Or again it can be said that participation through political elections, in the choosing of those who are to govern, is a part of the education of the public, and that the persons thus chosen proceed to receive a measure of higher education. It is not unlike the idea entertained in some quarters, of service upon earth as a qualifying period for a future life. Whatever be the reason for entrusting local government to locally elected persons, it may no doubt be taken for granted, given history and the outlook of the British public, that the system will continue. Once again, however, it does not by any means follow that the mode of election, or the areas of election, ought to be as they have been known so far. Lord and Lady Passfield a generation ago produced a superficially plausible project by which a person would be elected for some geographical area, to represent it upon local authorities of every kind, those local authorities working within boundaries appropriate to their functions and often overlapping. Thus the parish of Dillwater could, as now, be within the rural district of Much Binding in the Marsh, and also in a water supply area based upon a city twenty miles away; and (as it was till lately) in a locally governed electricity area based upon a city twenty miles in the opposite direction, and so on, the difference being that Councillor Peacock, the elected of the parish, would represent it on each one of these authorities. Again, there is no inherent reason why elected bodies performing local government functions should always act for an area territorially defined for all or several purposes, or indeed why there should be such "bodies" at all, constituted in the manner hitherto preferred or in some alternative manner. The daily work could be carried on by professional persons, as it tends more and more to be at present, and, instead of their being responsible to and more or less supervised by locally elected bodies or committees of such bodies, they could be supervised by persons elected or selected in quite a different way. For instance, a person could be chosen to represent a geographical area or the followers of an avocation: a large number of members of Parliament are in fact chosen now to do the latter, whilst in name they do the former. That person could combine sitting in the House of Commons with a general supervision of local government in his constituency (if this was geographical), or within an area assigned to him for the purpose of such supervision, if he was elected to Parliament on an occupational instead of a territorial basis. The chief difference to be noticed by the ordinary member of the public would be that local government functions would be performed more quickly, by elimination of the committee system; more thoroughly, because of more explicit professional responsibility; and less expensively because nepotism and corruption could be dealt with drastically. We do not say that these advantages would be purchased wisely, at the cost of abandoning elections, and elected persons; councils, committees, sub-committees, joint committees, and the rest. We only say that local government could be carried on under the system we have just sketched roughly, if people wanted it like that. The question to which reformers ought to address their minds, upon the threshold of reform, is what local government is for. Is it a method of getting the work done, which at a certain time public opinion generally thinks needs to be done, or is it a method of self expression? The English approach has vacillated between these points of view.

[Previous articles on this subject appeared in our issues of June 3 and June 10, 1950.—*Ed. J.P. & L.G.R.*]

ANNUAL REPORT OF THE NATIONAL COUNCIL OF SOCIAL SERVICE

The annual report of the National Council of Social Service for 1948-49, begins with a tribute to Dr. W. G. S. Adams, C.H., who has been its chairman for thirty years, and who is succeeded by Dr. Keith A. H. Murray, Rector of Lincoln College, Oxford. The report then goes on to refer in detail to the action of the Government in setting up a committee to inquire into the law relating to charitable trusts which was due largely to the initiative of the council in association with other voluntary organizations. Then follows an account of the work of the groups and committees associated with the council of which the Standing Conference of Councils of Social Service is one of the most important. A brief account is given of the work of the National Old People's Welfare Committee whose separate report we reviewed at p. 128, *ante*.

Another activity of the National Council is in connexion with Citizens' Advice Bureaux which were called upon during the year to answer many inquiries as to the new insurance and health services which came into operation in July, 1948. The monthly average number of inquiries for 1948 was 133,000 as compared with 125,000 in 1947, and 120,000 in 1946. The total number of inquiries received in the year was 1,599,417, and of this number 243,463 were questions relating to the operation of the new social services. It is suggested in the report that two facts emerge from a careful survey of the work of the bureaux. First, the service they provide enjoys the confidence of the general public, because, almost as a matter of course, the ordinary man or woman now turns to the bureaux with any new need or problem. Secondly, although this non-official service of information and advice has become an established institution, it retains its original merit of adaptability and flexibility. These achievements have been made possible because a large company of men and women are willing to give part of their leisure time

as friendly counsellors to their fellow citizens. They are however well aware that in the immense field which their activities now cover they can only operate effectively if they realise their limitations and are prepared to take advantage, in the interests of those who consult them, of all the available specialist help. Another element making for the success of the bureaux has been the wide measure of understanding and support the service has received from statutory and voluntary organizations. The Central C.A.B. Committee is now giving consideration to the development of this work in the rural areas which it is felt would provide a valuable adjunct to the social life of small towns and the larger villages.

The National Federation of Community Associations has also progressed during the year. There are now 143 associations in full membership and thirty-one associate members. The provision of premises in which to house the activities of each association is still limited by economic conditions. Nevertheless thirty buildings have been acquired, adapted or built during the year, and some of the new premises have been built by the voluntary labour of members of the associations. The Federation attaches great importance to the employment by community associations and centres of qualified full-time secretaries and wardens. The number of such officers is steadily increasing. It has noted with satisfaction, therefore, that the Ministry of Education has issued a report setting out suggestions for training such officers and dealing with conditions of employment and status.

RURAL WORK

One of the major tasks of the National Council is to work, with the assistance of H.M. Development Commissioners and voluntary organizations, for the improvement of conditions in the countryside. The rural department has therefore studied most carefully the impact of the recent social legislation on the lives of the people in the rural areas. It was felt in some quarters that the wide extension of public provision would lessen the need for voluntary effort. The information available to the council shows however that over the whole field of social work the effect has been the opposite. Two main reasons are suggested for this. First, that recent social legislation has recognized new needs and in many instances has provided for collaboration between statutory and voluntary organizations to meet them. Secondly, the new social services, by creating a minimum standard of social security and a public health service, have liberated many voluntary societies from their former responsibility for the relief of poverty, sickness or distress and enabled them to turn their energies to more constructive social purposes. Rural Community councils, whose function is to create a better social environment in the countryside, and to advise the rural population on their rights and duties so that they can understand and make full use of the widely extended public services, have therefore an enhanced responsibility. As co-ordinating bodies they are being called upon to help voluntary organizations to reorganize and readjust their work to meet the new claims being made upon them. They are also increasingly called upon to carry out their important function of establishing good working relationships between statutory and voluntary bodies. The wisdom of setting up co-ordinating councils in some thirty-three administrative counties has certainly been fully vindicated.

The provision of a village hall in every village of any size has been one of the main objectives of the National Council for thirty years. In spite of the uncertainties and disappointments which village hall committees have to suffer at this time of financial stringency and shortages, the work has continued satisfactorily. Since the end of the war, 183 grant applications in respect of village hall schemes have been dealt with. Of this total, 111 were submitted during the past year and recommendations were made on them to the Ministry of Education. Through Rural Community Councils and its rural officers, the council is in touch with over 3,000 villages where schemes are in course of preparation. Most of the schemes dealt with during the year were for the acquisition of existing buildings or the improvement of existing village halls. A limited number of permits have however been given for new buildings where the use of closely restricted materials is not required.

The department continues to collaborate in the plans and work of the National Association of Parish Councils, which now completes its third year as a separate entity. The National Council provides the secretarial services for the association and undertakes promotional work on its behalf. The striking progress of the association is indicated by the fact that there are now fifty-four county associations with approximately 2,500 affiliated councils.

Other activities mentioned in the report are those relating to the National Standing Conference of Women's Social Service Clubs to which there are now associated 671 clubs with a membership of 23,675; the Standing Conference of National Voluntary Youth Organizations; the Women's Group on Public Welfare, an interesting activity of which during the year was the compilation of a list of seventy-eight names of experienced women qualified to serve on Royal Commissions and government committees. This was forwarded to the Prime Minister at his request for the use of government departments. In the provinces the Standing Conferences of Women's Organizations made similar recommendations for service on regional and local bodies.

FINANCE

At the end of the war, the National Council was faced, like many other organizations, with the problem of repairing the ravages of six years' emergency. War-time work had to be wound up, abandoned projects had to be taken up again; temporary staff had to be replaced; worn-out cars and office equipment had to be renewed—all at a time of rising costs and increased demands. Current income, though increasing steadily each year, was insufficient to meet these exceptional demands and it was decided to draw on the general reserve. During the three financial years 1945 to 1947, £23,670, amounting to almost the whole of the free reserves, were used to meet deficits on income and expenditure account. In the financial year April 1, 1948 to March 31, 1949, to which the figures in this year's report relate, the National Council decided that the exceptional demands of the immediate post-war period had been largely met and that expenditure should be more directly related to current income. In the result, it has been possible to return to the general reserve a balance of £2,093 on the income and expenditure account. But it is not expected that this favourable result will be achieved in future years. Costs continue to rise; the National Council's policy of improving the conditions of service of its permanent staff must be carried out; and the effects on income of continuing high taxation will be increasingly felt. It is therefore still urgently necessary that voluntary contributions should increase.

The National Council acknowledges with gratitude the substantial grants which have been made by H.M. Development Commissioners for rural development; by the Ministry of Health for Citizens' Advice Bureaux central services, and by the Ministry of Education for community and youth work. During the year the National Council has also been most generously helped by the Nuffield Foundation and the National Corporation for the Care of Old People in its work for the welfare of old people, and by the Carnegie United Kingdom Trustees for the general work of the Council.

A POSSESSION CASE AND A RENT TRIBUNAL

The case of *R.* v. *Bootle Rent Tribunal, ex parte Taylor*, heard by the Divisional Court on April 24, 1950, was not noticed in *The Times* daily law reports, and may not later be reported, because the decision was ultimately given upon a narrow, more or less procedural, point. We are indebted to a learned correspondent who, though not engaged in the case, happened to be in court, for the following particulars both of the point on which the case was disposed of and of other issues which had been argued. The narrow point was that, presumably by inadvertence, the application for a *certiorari* to bring up and quash a decision of the tribunal had been based upon a statement which was demonstrably false; the court on that ground as soon as it emerged declined to entertain the application any further. It was remarkable both that the error should have been made in the first place, and that counsel should have developed his argument for the application at great length before the error was discovered. It was, indeed, not discovered at all until counsel for the tribunal had made his opening submission, that the whole case was misconceived, although even he made this submission on other grounds. In the papers submitted with the application, it was said that at a hearing last September the tribunal had granted three months security of tenure to the lessee, whereas, upon examination of the tribunal's actual order, it was found that no period of security of tenure had been specified at all. It seems probable that what happened was something like this: at the hearing in September neither party had had legal representation, and the three months period named in s. 5 of the Furnished Houses (Rent Control) Act, 1946, has become so well settled in everybody's mind that the parties, and conceivably the tribunal itself, assumed that the tribunal's decision in favour of the lessee would carry with it a period of three months security from the date of the reference unless the tribunal otherwise ordered, in accordance with the section. The parties, though not of course the tribunal or its clerk, would not unnaturally assume that the order, which evidently they never studied carefully, would embody this three months security. In point of fact not only did the tribunal make no order for security in September, but it could not have done so under s. 5 of the Act of 1946, because the reference of the contract to the tribunal did not take place until after the lessor had served notice to quit. Incidentally, the notice to quit had expired before the lessee referred the contract to the tribunal, so that by the very terms of s. 11 of the Landlord and Tenant (Rent Control) Act, 1949, the tribunal would have been equally powerless to grant in August or September any period of security. As already stated, the Divisional Court rejected the application, upon the ground of the submission to them of erroneous information regarding the tribunal's order; this was enough to dispose of the case, but before the error was discovered there had been developed by counsel a full argument on behalf of the applicant, *i.e.*, the lessor, and indications of the views of the Court had been given upon several points in that argument. It is for this reason that our learned correspondent thought we might desire to have the note he gave us.

The premises in question were part, evidently, of a working-class dwelling. They had been let on terms which, it appeared, included the supply of electricity by the lessor to the lessee, there being possibly no separate electrical meter in the house. It was assumed by the parties that this was a supply of "services", which put the letting outside the ordinary provisions of the Rent Restrictions Acts; although counsel for the lessor (a woman) did suggest in the Divisional Court some doubt about this, he did not strongly press the point since, if he had proved that his client was outside the tribunal's jurisdiction because outside the Act of 1946, he would have done her no service, inasmuch as this would have meant that the letting fell within the Rent Restrictions Acts. In addition to the electricity, to which the lessee was apparently entitled under contract, the lessor had apparently rendered a variety of services some of which at any rate were outside the contract, such as shopping for the lessor and cleaning the outside of all the windows. In a diffuse explanatory letter from the lessor to the tribunal, in connexion with the lessee's reference of the contract last August, a variety of such matters were set out; from that letter it appeared that the demised premises and the part of the house occupied by the lessor must have been intermingled, since one of the grounds of dispute was that each of the parties was using the other's cooking stove, and the lessor was anxious to have the scullery accommodation exchanged in order to put this right. (As one stove was a gas cooker and the other electric, a mere change over of the stoves themselves would have been impracticable.) It was, in other words, the sort of arrangement so commonly found at the present day in lettings of this class, where the rights and wrongs of the parties are almost impossible to sort out by ordinary legal process, but a lay tribunal, which visits the premises and interviews both parties, can do some sort of rough justice. At a date in June, 1949, which was not precisely specified, the lessor conceived the idea that the weekly rent of a guinea was too low to cover the miscellaneous services she rendered, and she sought to increase it to £1 2*s.* 6*d.* When the lessee refused to pay the extra eighteen pence, she stopped cleaning his windows and doing his shopping, and on June 5 served on him a month's notice to quit. Whether the letting was from week to week or from month to month, or how otherwise, did not appear in course of the proceedings in the Divisional Court. It was, to judge from a later event in the story, a weekly letting; there was at all events no dispute but that the calendar month's notice given on June 5 was sufficient to put an end to the letting, which therefore expired on July 5. Within the currency of this notice, the payment of rent of course continued; after the expiry of the notice the lessor continued to receive rent, either at the old sum of a guinea or possibly (not probably) at the new figure of 22*s.* 6*d.* This continued for seven weeks; the lessee did not quit and the lessor did nothing towards evicting him, until on August 23, seven weeks after the notice to quit had become operative, the lessee applied to the tribunal for a reduction of rent. Had the lessor been acting under advice she would obviously have put her foot down at this stage, even though she had not done so before, and would have contested the tribunal's right to entertain the reference but, as it was, the tribunal, not having been told by either side of the notice to quit, now three months old, heard the case on September 22, and made an order confirming the rent of a guinea. Upon this, it being assumed by both parties that the tribunal's decision carried, either by express provision or automatically, security of tenure until December 22, an assumption for which there was no warrant either in the tribunal's order or in the Act, payment of rent continued for three months. On December 22, the lessor served a new notice to quit expiring at the end of a week, namely on December 29; on December 23 the lessee applied to the tribunal, for an extension of the period of security of tenure supposed to have been granted by its order of September 22. It was at this point, for the first time, that either of the parties obtained legal advice and, when the new application for security came before the tribunal in January, 1950, the lessor was represented by counsel, who argued that the tribunal had no jurisdiction to entertain the application because the contract of tenancy no longer existed, having been put an end to

by the notice to quit of the previous June. He could not resist the application to the tribunal upon the footing of *vires*, except by saying that the contract was already dead, because, if it was alive on December 22, it was also alive on December 23 when the lessee applied for an order under s. 11 of the Act of 1949, and the lessee would have been in time under that section. Counsel was thus forced into the position, both of arguing that the tribunal's order of September, 1949, was made without jurisdiction (because the tenancy had even then already come to an end) and of arguing that the second notice to quit, given on December 22 by his client, was a nullity, having been given superfluously, without legal advice. Indeed he made a great deal of his client's having from first to last not understood her rights, but the Lord Chief Justice pointed out in several interruptions that this could not of itself affect the legal position. In January the tribunal entertained the lessee's application for an extension of security of tenure, deciding it under s. 11 of the Landlord and Tenant (Rent Control) Act, 1949, and granted a limited period, it being of this that complaint was, fundamentally, made. In seeking to upset it, on the ground of its being made without jurisdiction, counsel for the lessor urged that her acceptance of rent, from the expiry of the original notice to quit on July 5 up to August 23, did not undo the effect of that notice; he relied upon *Clarke* v. *Grant* [1949] 1 All E.R. 768, and paragraph 3 in sch. 1 to the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938. Upon these arguments the court pointed out that, in *Clarke* v. *Grant*, the landlord's agent received the rent under a misunderstanding and therefore its being received could not be evidence of a renewal or continuance of the tenancy, while, in the schedule to the Act of 1938, the position contemplated is that the landlord will be unable to get rid of the tenant, and therefore it would be unjust to assume, from his receiving rent, that he has entered into a new contractual tenancy. Whilst fully admitting that receipt of rent after a notice to quit upon which neither side has acted does not, by itself, prove that, as it is commonly expressed, the notice to quit has been waived or that, in more correct language, a new contract has been entered into, the court found that all the circumstances of the present case, including not only the receipt of rent but the lessor's own letter to the tribunal, which spoke several times as if she thought of the tenancy as continuing after July 5, indicated continuance of the contractual relation. From this it followed that the tribunal had had jurisdiction to entertain the August reference, and adjudicate upon it in September. The tribunal's doing so did not however give any security of tenure; if the lessor's view, now advanced, that there was no contract in force after July 5, had been correct, she could at any time have gone to the county court for an order to eject the tenant. Had the case before the Divisional Court been dealt with upon merits instead of on a preliminary point: if, that is to say, the decision had been taken upon the case for the lessor as counsel presented it, the court would evidently have held that there was a renewed or continuing contract after July 5, which contract existed in August, so that both the tribunal's decision in September and the lessor's notice to quit on December 22 were in order. On this, it followed that the lessee was before December 29 entitled to move the tribunal under s. 11 of the Act of 1949 for an extension of the period of the notice of December 22. Here a rather subtle point came in, to which the Lord Chief Justice drew attention. There had already been a reference to the tribunal, on August 23, which was before the notice to quit was served on December 22, and therefore by the opening words of s. 11 of the Act of 1949 there was jurisdiction. Once a contract has been referred under the Act of 1946, and the reference has not been withdrawn, the tribunal can under s. 11 of the Act of 1949 always entertain an application to extend the period allowed by a notice to quit, served thereafter, whenever it is served, and however many notices have been served, so long as there is at the time of such application an unexpired period still running.

We agree with the correspondent who supplied us with a note of the case, that it is interesting upon these points, which did not actually fall to be decided, as well as, and even more than, upon the actual point, which was the rather obvious one that you can not ask for an order in the nature of a prerogative writ upon false information. The decision in *Clarke* v. *Grant*, *supra*, of which there was a good deal of discussion, will also repay study. The Court of Appeal there called attention to the fundamental error of confusing a payment of rent received after a cause of forfeiture with such a payment received after a notice to quit. Where the landlord is entitled to a forfeiture, when, that is, the tenant's interest has become voidable at the landlord's option, any receipt by him of rent shows that he has not exercised his option: *Doe d. Cheney* v. *Batten* (1775) 1 Cowp. 243. Where a notice to quit has been given and has expired, the tenant's interest is at an end. The receipt by the landlord of rent thereafter (otherwise than arrears outstanding in respect of the period of the former tenancy) can, at most, be evidence that a new agreement has been made: properly speaking, a notice which has expired and has taken effect can not be "waived," and the common practice of speaking of the waiver of such a notice can be misleading. Yet another moral seems to us to be that the journalistic practice which we have more than once deprecated, of speaking of a tribunal as "granting" three months security, when in fact it did nothing except refrain from cutting down the statutory three months, is dangerous. In the case of *R.* v. *Bootle Tribunal* no order granting security of tenure could have been made by the tribunal in September, 1949, under s. 5 of the Act of 1946, because the notice to quit had been served before the reference of the contract, or under s. 11 of the Act of 1949, because the notice given in June had expired before the said reference. Yet the three months of the former section seems so to have hypnotized not merely the lay parties but the lessor's solicitor and counsel, when very belatedly she took proper advice, that they did not even look at the tribunal's order or at s. 5 itself. From the lessor's point of view, the notice she served on December 22, though a proper step towards ending the tenancy, and in fact a necessary step upon the view the Divisional Court took, that the prior notice to quit was dead, was unfortunate, in that it let in s. 11 of the Act of 1949. She might have done better to go, instead, to the county court and try relying there on the original notice. As it was, she found herself through the mouth of counsel blowing hot and cold, obliged to say that her own notice of December 22 was wrongly served.

NEW COMMISSIONS

SOUTHAMPTON COUNTY

Lady Patricia Caroline Agnew, Glentimon, Palmerston Way, Alverstoke.
Albert Victor Alexander, 15, Meadow Road, Ringwood.
Ernest William Deane, The Chart House, Mudeford, Christchurch.
Adrian Graham Warren Hill, Creek Cottage, Lymington.
Mrs. Eileen Joan Little, 63, Christchurch Road, Ringwood.
Lieutenant-Colonel John Oliver-Bellasis, D.S.O., Wootton House, Wootton St. Lawrence, Basingstoke.
The Hon. David Reginald Rhys, Miltons, Stratfield Saye, Basingstoke.
Eustace Wentworth Roskill, Heatherfield, Newtown, Newbury.
Miss Iona Marjorie Taylor, Rodlease, Heywood, Boldre.
Mrs. Joyce Helena Tipler, Montreal, 20, Cargate Avenue, Aldershot.

WILTS COUNTY

Mrs. Mary Elizabeth Floyd, Holt Manor, Holt.
Leonard James Noad, 9, Sandridge Road, Melksham.
John Waylen, 23, Heathcote Road, Forest Melksham.

WEEKLY NOTES OF CASES

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Humphreys and Parker, JJ.)

R. *v.* FULHAM, etc., RENT TRIBUNAL: *Ex parte* PHILIPPE

May 16, 26, 1950

Rent Control—Tribunal—Jurisdiction—Premium "paid in respect of the grant, continuance or renewal of a tenancy"—Agreement by tenant to pay costs incurred by landlord for reconstruction—Rental equivalent determined by tribunal—Certiorari—Landlord and Tenant (Rent Control) Act, 1949 (12 *and* 13 *Geo.* 6, *c.* 40), *s.* 2 (1), *s.* 12 (2), *s.* 18 (1), *sch. I, Part I, para.* 1.

APPLICATION for order of *certiorari*.

The applicant, Felicie May Philippe, was the owner of two premises, Nos. 9 and 9A, Adam and Eve Mews, Kensington, which were used before the war as a café and shop and during the war suffered damage on two occasions. In 1945 plans were passed for the reconstruction of the premises into two flats with garages underneath. By 1947 most of the work had been completed, and on May 14, 1947, the applicant let No. 9A to one Perkins for a term of five years at a rent of £185 per annum. The lease contained a full repairing covenant on the part of the tenant. The engrossment provided that the tenant at his own expense would complete certain works of reconstruction and decoration which still remained to be done and were set out in a schedule. Before execution, however, the engrossment was altered at the request of the tenant, and, in order to limit his liability, was expressed to provide that he would pay to the applicant the costs incurred by her in completing the work up to the sum of £180. This work was, in the main, done, and the £180 was then paid. Almost at once Perkins asked to have a five-years lease of No. 9 and a fourteen-years lease of No. 9A so that he could dispose of the latter. The applicant was agreeable, provided that Perkins agreed, as he did, to pay over to the applicant half of any profit made by him in assigning the lease. This agreement was implemented by a surrender of the lease of No. 9A, the grant of a lease of No. 9A for fourteen years dated June 14, 1947, and an agreement dated June 14, 1947, for the payment by Perkins of half any such profit. On October 15, 1947, Perkins sold the lease to one Gibbs for £650 and the applicant agreed to the assignment against the payment by Perkins to her of £220 19*s.* 7*d.*, being half the profit made by Perkins on the sale. The letting of No. 9A in 1947 was the first letting of the premises, and in 1949 Gibbs applied to the Fulham Rent Tribunal for the determination of the standard rent, and asked the tribunal to certify under para. 1 of Part I of sch. I to the Act of 1949 in respect of the sums of £180 and £220 19*s.* 7*d.* On December 29, 1949, the tribunal certified that Part I of the sch. I applied, and determined the rental equivalent as £7 3*s.* 2*d.* per quarter and the relevant date as June 24, 1961. The tribunal, in arriving at that determination, treated both payments as premiums. The applicant applied for a writ of *certiorari* to quash the certificate and determination of the tribunal, contending that no premium had been paid, and that, accordingly, the tribunal had no jurisdiction to determine a rental equivalent. A preliminary point was taken on behalf of the tribunal, that, even if in law no premium had been paid, the remedy of *certiorari* did not lie.

Held, that (i) the jurisdiction of the tribunal to determine the standard rent and their jurisdiction to determine a rental equivalent were two separate jurisdictions, and that the preliminary point failed; (ii) that the tribunal were right in regarding the sum of £220 19*s.* 7*d.*, although not paid at the time when the lease was granted, as a premium paid in respect of the grant of a tenancy; (iii) that the £180, which was a contribution by the tenant towards work done by the landlord, was paid, not in respect of the grant of a tenancy, but in respect of work done by the landlord, and was wrongly regarded by the tribunal as a premium. The determination of the rental equivalent must, therefore, be quashed, but since by reason of the payment of £220 19*s.* 7*d.* the tribunal had jurisdiction to give the certificate, the certificate was valid and would not be quashed.

Counsel: *Gilbert Dare* for the applicant; *J. P. Ashworth* for the tribunal.

Solicitors: *Tatton, Gaskell & Tatton; The Solicitor, Ministry of Health.*

(Reported by T. R. Fitzwalter, Butler, Esq. Barrister-at-Law.)

R. *v.* BARNET, etc., RENT TRIBUNAL: *Ex parte* MILLMAN

May 16, 26, 1950

Rent Control—Tribunal—Jurisdiction—Premium "paid in respect of the grant, continuance or renewal of a tenancy"—Sum paid for goodwill—Rental equivalent determined by tribunal—Certiorari—Landlord and Tenant (Rent Control) Act, 1949 (12 *and* 13 *Geo.* 6, *c.* 40), *s.* 2 (1), *s.* 12 (2), *s.* 18 (1), *sch. I, Part I, para.* 1.

APPLICATION for order of *certiorari*.

Prior to 1947 one Reuben Millman ("the applicant"), who was the landlord of a dwelling-house known as 289, Lordship Lane, Tottenham, had, with the assistance of his wife, for many years carried on the business of a retail confectioner and tobacconist at the premises. He and his wife lived above the shop, and in the course of time he had built up a substantial goodwill. In 1947 he desired to retire and sell the business, and by a lease dated July 9, 1947, he devised the premises to one Leonard Montrose for a term of fourteen years (determinable at the option of the lessee at the expiration of the first seven years) at a rent of £260 per annum. By a deed of assignment of the same date, the applicant, in consideration of the sum of £1,500, of which £1,200 was then paid, assigned to Montrose all his goodwill, interest and connexion of and in his said business, and covenanted that he would not at any time thereafter carry on, manage, or be concerned, engaged, or interested in, the business of a confectioner or tobacconist within a radius of two miles from the premises. He further agreed to sell to Montrose all the stock of his business, to be paid for on delivery. Montrose and his wife were then living at No. 355, Lordship Lane, and the applicant, desiring to remain in the neighbourhood, obtained a fourteen years lease of those premises from Mrs. Montrose. On November 7, 1949, Montrose applied to the Barnet, etc., Rent Tribunal to fix the standard rent of 289, Lordship Lane, the letting to him having been the first letting. When the tribunal viewed the premises, Montrose referred to the payment of £1,500 for goodwill, and the tribunal then informed him that, if he so desired, he could make an application for the determination of the rental equivalent. On February 1, 1950, Montrose sent in an application to the tribunal referring to the £1,500 as a premium and asking the tribunal to certify that the provisions of Part I of sch. I to the Act of 1949 applied. On March 1, 1950, the tribunal heard the application and certified that Part I of the schedule applied, and determined the rental equivalent as £7 14*s.* 9*d.* per month and the relevant date as July 9, 1961. Millman applied for an order of *certiorari* to quash the certificate and determination of the tribunal.

Held, that, before the tribunal could certify and determine a rental equivalent, there must have been a premium paid in respect of the grant, continuance or renewal of a tenancy, and that, even assuming that the sum of £1,500 was a premium within the definition of that word in s. 18, it had not been paid "in respect of" the grant. The certificate and determination of the tribunal had, therefore, been made in excess of jurisdiction, and must be quashed.

Counsel: *Bernard Lewis* for the applicant; *J. P. Ashworth*, for the tribunal.

Solicitors: *Offenbach & Co., The Solicitor, Ministry of Health.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Devlin, J.)

EAST END DWELLINGS CO., LTD. *v.* FINSBURY BOROUGH COUNCIL

May 8, 1950

Compulsory Purchase—Compensation—Block of flats demolished by enemy action—Site acquired by local authority—Amount of compensation—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 53 (1) (*a*).

MOTION to set aside or remit an award of an arbitrator.

The claimants were the owners of land on which before the war there had been flats subject to the Rent and Mortgage Interest Restrictions Acts, 1920-1939. The flats had been completely demolished as a result of enemy action, and before they had been re-built the land was acquired compulsorily by the respondent borough council. Under the Town and Country Planning Act, 1947, s. 53 (1) (*a*), in arriving at the compensation payable in respect of a compulsory purchase, the value of the claimants' interest was to be taken to be "the value which it would have if the whole of the damage had been made good before the date of the notice to treat." An arbitrator, determining the compensation due to the claimants, based the figure at which he arrived "on the assumption that, if the whole of the said war damage had been made good before the date of the . . . notice to treat, the rents legally recoverable in respect of the said dwellings would not be subject to the statutory limits imposed by the" Rent Restrictions Acts because the flats in the reconstructed building would be new flats first let since 1939, and on this basis he assessed the compensation at £32,000. The respondent council contended that, in view of the presence of the words "made good" in s. 53 (1) (*a*) of the Act of 1947, the construction of a new, identical, building did not result in any notional loss of identity of the original building, so that the original building must be regarded as retaining its identity and the rents of the flats would be restricted to those payable in respect of the original flats.

Held, the newly constructed flats, even though identical with the original dwellings, would not have continued the identity of those dwellings, and their rents would not have been restricted to the rents under the Rent Restrictions Acts payable in respect of the original flats. The basis adopted by the arbitrator was correct, and the award must be upheld.

Counsel: *Rowe*, K.C., and *Squibb*, for the claimants; *Lawrence*, K.C., for the council.

Solicitors: *George C. Carter & Co.*; *John E. Fishwick*.

(Reported by F. A. Amies, Esq., Barrister-at-Law.)

REVIEWS

The Historical Development of Private Bill Procedure and Standing Orders in the House of Commons. Vol. II: The Standing Orders Annotated. By O. Cyprian Williams. London: His Majesty's Stationery Office. Price 17s. 6d. net.

This volume is part III of a larger book, upon the private Bill procedure and related standing orders of the House of Commons. It comprises notes on the standing orders themselves, which are in a sense the foundation of the whole work, and it completes the author's task. Most local government officers at some time in their career are concerned with private Bill procedure in Parliament; they, and members of the legal and some sections of other professions, and many members of local authorities, will find Mr. O. C. Williams' notes on detailed points extremely interesting, and often curious. The whole subject is rather technical, and it must be realized that the author's purpose has not been to provide a work for students or a treatise on parliamentary procedure. At the same time no one can look carefully at these notes without learning a good deal about it. At the beginning there is a general note on the printing and numbering of the relevant standing orders in the House of Commons, since they were first published as a whole, and at the end a list of those which have from time to time been omitted or repealed. The detailed notes record what happened to each of the standing orders in the revision of 1945, for which, if we are not mistaken, the chief responsibility rested upon Sir Frederick Liddell, just before and just after his retirement from the position of Mr. Speaker's Counsel. The historian and student may share the author's hope, that some day the standing orders of the House of Commons relating to public business will be similarly treated, and that some member of the staff of the House of Lords will deal in the same way with their standing orders. There is always *Erskine May* which stands in a class by itself, but the purpose of the present work is different, and even *Erskine May*, in his dealings with the public business of Parliament, does not attempt the precise historical exposition for which Mr. Williams has here made himself responsible. For the reader who possesses the right background, and enough of historical sense to realize the importance in the development of English law of the private Bill procedure, this is a compilation of the first importance. It does credit alike to the scholarship of Mr. Williams, whom many of our readers will remember as a senior member of the staff of the House, and to the enterprise of H.M. Stationery Office, in accepting the responsibility of making a work of this class available to the public and to the historian.

Digest of Land and Property Cases, 1949. By C. William Skinner, London: Estates Gazette, Ltd. Price 30s.

This *Digest* of law reports published in weekly issues of the *Estates Gazette* has come to occupy a place of its own upon legal book-shelves. It overlaps to some extent cases reported in the ordinary law reports, but it also gives a number which are not to be found there, upon subjects which are of special interest to persons dealing with land. We have also found it from time to time valuable, as giving more detailed information about the facts of cases than appeared in the regular legal papers. While the primary purpose of the compilation is to meet the requirements of surveyors and property managers, who need to know how the courts have been dealing with their problems, there are also aspects of those problems with which lawyers, particularly local government lawyers, have to make themselves acquainted. The digested cases are reported in a number of groups such as the Compensation (Defence) Act, 1939; Rating; Rent Restriction; and Town and Country Planning. The three last mentioned are, we suppose, those which most concern our readers, but there are sixty pages of reports on compulsory purchase, and thirty pages on landlord and tenant, much of which is important in the local government world. One advantage of possessing this digest is that quite full reports are given of cases before arbitrators, which get into the law reports only in the form of a Case Stated, where usually there is no more than the decision upon the legal point. There will also be found important quarter sessions cases upon rating, which will be valuable even under the new system of valuation. We have used previous volumes of this *Digest* for some time, and have no doubt that the present volume will be equally helpful.

Precedents in Conveyancing under the Planning Acts. By Harold Potter and D. Macintyre. London: Sweet & Maxwell, Ltd. Price 21s. net.

This small book will, we think, be found of great use in daily practice, in almost all legal business arising out of sales, leases, mortgages and settlements. Until the Town and Country Planning Act, 1947, came into operation there was (so far as our observation goes) a tendency among practitioners rather to ignore the bearing of the Planning Acts, from 1909 to the outbreak of war, upon transactions in real property. The very slow rate of bringing planning schemes into operation, coupled with the fact that the drastic powers given to local authorities under the head of interim development depended first on the resolution to prepare a scheme, and ultimately upon the coming into force of a scheme, lulled many lawyers into the belief that planning law would not greatly affect the interest of their clients. The fundamental revolution in the rights of property owners, which was brought about by the Town and Country Planning (Interim Development) Act, 1943, passed almost unnoticed in the middle of the war—it may, indeed, be not too much to say that but for the war such a revolution could not have been brought about except after prolonged and bitter controversy. Having taken that first revolutionary step, Parliament was in a much stronger position to pass the Act of 1947 which, with singularly little opposition at the time, destroyed the last vestiges of the conception that a man might do as he wished with his own property so long as he injured no one else. Up to the present, it is the charging sections of that Act, imposing a form of confiscatory taxation upon one species of property, which have attracted attention and given rise to proposals for repeal, but whatever happens to the taxation provisions of the Act it is hardly to be supposed that the other half of it, which subjects all landed property to control of use by public authorities, will disappear. It has therefore become essential for the conveyancer to rearrange all his notions, about the sort of contingencies to be provided for in the interests of the vendor or the purchaser. Dr. Potter and Mr. Macintyre do not profess to give here a full set of conveyancing precedents. For these it is still necessary to look to one of the existing standard works, *Key & Elphinstone* being that which the learned authors themselves prefer. What they have done is to provide, in rather more than one hundred pages of the book, clauses to be used with standard precedents, to meet various contingencies and deal with a variety of matters arising out of the Town and Country Planning Act, 1947. Special mention is also made in the preface of two forms of agricultural agreement, necessitated by the Agriculture Act, 1947, and the Agricultural Holdings Act, 1948. In addition to the precedents, there is an introductory chapter for which we are told Mr. Potter is mainly responsible, showing in outline the principal changes brought about by the Town and Country Planning Act, 1947, and their bearing upon contracts, conveyances, leases, wills, and settlements. So much remains to be ascertained, in practice and empirically, by decisions of the courts about the effect of this sort of legislation, that it is hardly to be expected that the present little book will carry the practitioner along for very many years. Indeed, no one can at the moment forecast what is likely to be the effect upon the Act of 1947 of the next general election.

Taking the law as it stood at the end of 1949, with all the uncertainties to which the learned authors call attention, about its application to the circumstances with which the practitioner will have to deal, one can say that this work will be a valuable supplement to the conveyancing literature upon the ordinary practitioner's shelves.

Local Government and the Colonies. Edited by Rita Hinden. London: George Allen and Unwin, Ltd. Price 16s. net.

This work is a report to the Colonial Bureau of the Fabian Society, comprising contributions by a number of persons who have special knowledge of local government in the Colonies and elsewhere. A great deal of it is specialized information about particular Colonies, and there are maps of eight of them. For the general reader at home, with no colonial links of his own, the most interesting, and indeed important, part will be the introductory chapters by Professor T. S. Simey. The detailed chapters on particular territories are said to have been sent out to persons on the spot, who had knowledge of local gov-

ernment conditions, and for the most part have remained anonymous. These will be of great value to any readers who have experience in the Colonies dealt with or elsewhere in the Colonial Empire, and worth perusal by others who realize how important the growth of local government institutions may yet be as the overseas possessions develop. Probably, however, Professor Simey's introductory chapters will be the part to which the general reader will return, and we do not remember to have seen a clearer account of the functions of local government as it has developed in this country. Generally, the work seems free from political bias, notwithstanding that it has been prepared for an avowedly political body, and it can be recommended as an impartial no less than an instructive study of its subject.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CONTINUITY OF READERSHIP

My two predecessors (Henry Downe Barton, 1835-1887; John Isaac Pengelley, 1887-1935) not only left to the young man who succeeded them a full set of "The Justice of the Peace" to which they had subscribed from the first number but had added much to the interest of the volumes by inserting their own views and comments in frequent and copious marginal notes.

Yours faithfully,
J. WHITESIDE.

The Court House,
Exeter.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CONTINUITY OF READERSHIP

With reference to the correspondence you print at p. 302 *ante*, in your issue of June 3, 1950, of the *Justice of the Peace and Local Government Review*, you may be interested to know that I have a set of the *Justice of the Peace* starting with No. 1 in 1837. Unfortunately, some of the earlier volumes are missing and probably got lost when this office changed its domicile about fifty years ago, but the set is practically complete. No. 1 has in it the name of James Vaughan Horne, who I believe was the founder of this practice, and who, I think, must have been in practice in Denbigh, for some years before 1837.

Yours faithfully,
TREVOR W. JOHNSON.

Parry Jones, Francis & Johnson,
Solicitors,
Hall Square,
Denbigh.

[We are obliged to our correspondents, and will be pleased to hear from other readers who can trace their firms having received the "J.P." since its inception in 1837.—*Ed., J.P. & L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

CHANGE OF NAME OF MARRIED WOMAN—DEED POLL

With reference to P.P. 8 in your issue of May 20, a deed poll changing name cannot be enrolled in the Central Office without the husband's consent—*see* Enrolment of Deeds (Change of name) Regulations, 1949; S.I. 1949, No. 316.

Yours faithfully,
SPARKES & CO.

31, High Street,
Crediton.

[We are obliged to our learned correspondent.—*Ed., J.P. & L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

JUDEX ARTIFEX

I have studied with personal profit your most thoughtful article on p. 207, but you have not altered my opinion about *Errington* v. *Minister of Health* (1935) 99 J.P. 15. I had just become town clerk of Jarrow when the letter from the Ministry of Health came, indicating the intention of officials from the Ministry to come and visit the clearance area. When the officials arrived they expressed surprise that the owners had not been notified, but nevertheless made the inspection. The owners who, of course, stood to get no compensation (except possibly under s. 42 of the Housing Act, 1936, for well-maintained houses) if the order were confirmed, were very concerned to make sure that their point of view should be fully known to the Minister through themselves and their own expert witnesses, and, although they had played their part in the public inquiry which had preceded the officials' inspection, they claimed that they should have been given the chance of being present on that subsequent occasion.

At the time when the Court of Appeal found for the owners, I thought that the case had gone the right way, but afterwards, on reflection, I changed my opinion (with the greatest of respect, of course). The Jarrow corporation in making the order acted in accordance with administrative (and political) policy embodied in an Act of Parliament. The Minister of Health as the confirming authority was responsible to Parliament. The inquiry was, if of any significance at all, of political significance. It brought, as in my opinion do all such inquiries, through press report and otherwise, the working of a political policy before the public in relation to a particular matter. Should a Minister act arbitrarily, *e.g.*, in confirming or refusing to confirm an order, the opposition in Parliament can make such use of what transpires as they think fit. So far as the individual owners were concerned in *Errington's* case, they may have been "again" the Government politically. But however that may have been, and I do not know, their immediate concern was probably financial. They said in effect: "The local authority says the property is unfit. Tell us what standard of repair and reconstruction is necessary and give us a chance to show you that such can be carried out." The council said in effect, that the property was beyond repair and was properly in the clearance area. The Minister had to decide between them. The Act required in the circumstances a local inquiry. That had been held with no complaint about it from the owners, except that they thought they had made their case and said that the subsequent visit was because the inspector's report was against confirmation. The "Minister" made the second visit presumably not being satisfied by the report of the inspector. If in *Offer* v. *Minister of Health* the previous visit was objectionable, why should the subsequent visit in *Errington's* case be otherwise? The owners at the *Errington* inquiry may have convinced the inspector or they may not. The Minister may have decided not to accept the report of the inspector. The report may have contained reservations. I do not know the answers to such questions, and I do not expect ever to do so. Nor am I particularly concerned, for in my view the inquiry had been properly held, properly opened, conducted and closed, and the owners at no time objected that it was not the inquiry that the Act required. Any inquiry of the kind may in this twentieth century conception of Government be the farce that many of the critics say it is. That may be so, but so long as that conception of Government prevails, it is in a country of free expression a useful safeguard, and the courts see that it is conducted properly. But beyond that it does not go. And whilst the "Minister" in such matters may not be acting throughout "administratively," one ought not unduly to refine technical expression, and my opinion remains that in the vital act, *the decision*, be it on the question of confirming a clearance order or planning appeal, to mention what is specifically mentioned in *Judex Artifex*, the Minister acts administratively (or, perhaps, executively, though over the difference in meaning of those two technical words I never cheerfully take on argument).

Yours truly,
CHARLES S. PERKINS.

Gosforth,
Newcastle-upon-Tyne, 3.

[On the comparison which our learned correspondent draws between *Errington* and *Offer*, see what was said in our article.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"FESTIVAL SANCTIONS"

You imply in your admirable comment at p. 260 upon the use by the Minister of Health of the proviso to s. 288 (1) of the Local Govern-

ment Act, 1933, to give a general blanket sanction of expenditure, that the sanction precludes a private individual from challenging the expenditure in the High Court when that expenditure is subject to audit by the district auditor. May I refer you to *R.* v. *Grain ex parte Wandsworth Guardians* (1927) 91 J.P. 71? This decision is upon s. 3 of the Local Authorities (Expenses) Act, 1887, and not upon its successor, s. 228. The judgments too are *obiter* upon this point. Nevertheless the learned author of *Hart's Introduction to the Law of Local Government and Administration* goes so far as to give this case as authority for the proposition that an individual can successfully challenge in the High Court expenditure sanctioned by the Minister of Health. I think you will agree also that the wording of s. 228 solely refers to the powers of a district auditor and that the proviso to subs. (1) is certainly not wide enough to curtail the jurisdiction of the High Court.

Yours faithfully,
P. J. HALNAN.

5, Wordsworth Grove,
Cambridge.

[We agree; our note was not intended to convey the meaning now suggested, but we might better have said "could not there be challenged" instead of "could not be challenged." The new proviso equally with the old section has to do with audit action alone, as our note otherwise indicated. This is among the reasons why we dislike these general sanctions. Sanction cannot, and does not pretend to, render legal an item of expenditure not otherwise legal: see the remarks of the Local Government Board, quoted in *Lumley*, p. 1073.—*Ed., J.P. & L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

THE DEPRIVED CHILD

With reference to the Notes of the Week in your issue of May 20, I do not know whether your attention has been called to the Rating and Valuation (Forms of Demand Note) Rules, 1948.

You will see that "Care of Deprived Children" is one of the items which has to appear in all rate demand notes issued in England.

So far I have not seen the item printed as "Care of Depraved Children" but it seems likely that someone, some time will make that slip.

Yours faithfully,
"RURAL CLERK."

[We are obliged to our correspondent for drawing our attention to this point, which strengthens the view we expressed. The description on the demand note seems to be very inapt as the item presumably applies to all expenditure incurred by the council under the Children Act, 1948. This is not confined to the actual care of children who were covered by the Curtis Report. We feel all the more justified therefore, in the views we have expressed, but we did not realise at the time that the Ministry of Health were also concerned.—*Ed., J.P. & L.G.R.*]

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 38.

LANDLORD TO PROVIDE DUSTBINS

At Romford Petty Sessional Court on March 22, 1950, a limited company appealed as an aggrieved person against a notice served by the Hornchurch urban district council requiring the company, as leasehold owners, to provide dustbins at two properties within the area of the council.

For the appellants, it was contended that the requirement was unreasonable having regard to the rent which the landlords were permitted to charge, and the amount of the outgoings. Counsel drew a distinction between the case of a private landlord and the local authority landlord, pointing out that the latter should properly provide a dustbin as they could and did increase the rents of their houses to cover the increased cost of maintenance, etc.

The company's agent was called to support the case of the appellants, and the tenant of each property and the council's chief sanitary inspector gave evidence on behalf of the council.

It was proved or admitted that the properties were leasehold, held by the company on 999 years lease of which only about thirty years had run. The rents were controlled under the Rent Restrictions Acts and in the one case amounted to £50 18*s.* 4*d.* per annum and in the other to £52 4*s.* 4*d.* The outgoings in the first case amounted to £46 9*s.* per annum, leaving a net income of £4 9*s.* and in the second case amounted to £47 10*s.*, leaving a net income of £4 14*s.* 4*d.*

The existing dustbins were worn out and there was no contract between landlord and tenant as to who should supply new dustbins. Previous landlords of the two properties had supplied dustbins in 1944 in one case, and in 1945 in the other.

One house had had £2 15*s.* 11*d.* spent on it in repairs during the last twelve months and no comparable figure was available for the other house.

The cost of putting the two houses in good order amounted to £77 for one house and £63 for the other, and these repairs would be undertaken by the landlord, who had purchased the properties just over a year ago with full knowledge of the gross income and outgoings payable in respect of each property.

The special sub-committee of the council's public health committee had considered in the first place the question as to on whom notice under s. 75 of the Public Health Act, 1936, should be served and the question was considered in the light of information provided by tenant and owner in reply to a questionnaire sent to them by the council. The recommendations of the sub-committee were then considered by the public health committee and that committee's recommendation by the council, and it had been decided that it was reasonable for the landlord to be served.

The appeal was dismissed.

COMMENT

Dustbins have been very much in the foreground this year in this journal and in these circumstances it is not my intention to discuss at length the legal position arising under s. 75 of the Act and the leading decisions upon it, as such matters were fully dealt with at pp. 165 and 203 *ante*.

I think that the case may be of interest as showing that a landlord may find himself saddled with the liability to provide a dustbin even though his financial interest in the property is to all intents and purposes negligible.

It is lamentable that disputes upon petty matters of this nature should occupy the time of the courts, the parties, and their legal representatives, but so long as the Rent Restrictions Acts remain in their present form and landlords are prohibited from obtaining a reasonable return upon their investments there are bound to be disputes of this nature.

(The writer is indebted to Mr. P. L. Cox, clerk to the Hornchurch U.D.C., for information in regard to this case.) R.L.H.

PENALTIES

Oxford—May, 1950—receiving 125 petrol coupons knowing them to have been stolen—fined £25. Defendant a twenty-six year old electrician.

West Bromwich—May, 1950—obtaining £5 by false pretences from a licensee—fined £10. Defendant, a man of twenty-eight, frequented a public house and spent money there lavishly. He later borrowed £2 from the licensee on the pretence that he had to pay two of his staff and subsequently a further £3 on the pretence that he would produce some whisky in exchange. Defendant was stated to have been offered 140 jobs since 1940, of which he had accepted thirty.

Watford—May, 1950—disposing of ration documents otherwise than in accordance with the provisions of the Food Rationing Order—fined £1. Defendant, a married woman of seventy-eight with no income except her and her husband's old age pensions, spilt a bottle of ink over two ration books and subsequently burnt two pages of one of them.

BIRTHDAY HONOURS

PRIME MINISTER'S LIST
KNIGHTS

Nott-Bower, John Reginald Hornby, deputy commissioner, Metropolitan police.
Shiner, Lieutenant-Colonel Herbert, chairman, West Sussex county council.
Smart, Harold Nevil, president of the Law Society.
Vick, Godfrey Russell, K.C., chairman of the General Council of the Bar.

ORDER OF THE BRITISH EMPIRE

C.B.E.
Fletcher, E. W. S., assistant solicitor, office of H.M. Procurator-General and Treasury Solicitor.
Fraser, G., assistant solicitor, General Post Office.
Montague, E. E. S., K.C., Judge Advocate of the Fleet.
Templeman, Alderman T. J. W., chairman, police committee of the Association of Municipal Corporations.

O.B.E.
Binyon, C. A., lately chairman, Evesham rural district council.
Garner, J. H., lately chief inspector, West Riding rivers board.
Jamieson, J. D., principal, Home Office.
Mahon, Alderman S., for political and public services in Bootle.
Mays, A. S., honorary secretary, Society of Clerks of Urban District Councils.
Skittery, J. F., chief constable, Plymouth.

COLONIAL OFFICE LIST
ORDER OF THE BRITISH EMPIRE

C.B.E.
Ganado, E., lately Judge, Malta.

KNIGHTS BACHELOR

Coussey, James Henley, puisne judge, Gold Coast.
Wilson, Mark, colonial legal service, chief justice, Gold Coast.
Woodley, Frederick George Richard, mayor of Nairobi, Keyna.

THE KING'S POLICE AND FIRE SERVICES MEDAL
POLICE: ENGLAND AND WALES

Edwards, E. A., chief constable, Middlesbrough borough police force.
Chadwick, J., chief constable, Huddersfield borough police force.
Lofthouse, H. S., assistant chief constable, West Riding of Yorkshire constabulary.
Stanley, J., assistant chief constable, Warwickshire constabulary.
Batson, W. C., chief superintendent, Metropolitan police force.
Smith, T. A., chief superintendent, Liverpool city police force.
Smeed, F. H., chief superintendent, Kent constabulary.
Davies, R. A., superintendent, Surrey constabulary.
Russell, C., superintendent, Metropolitan police force.
Harris, H. S., superintendent, Metropolitan police force.
Balmer, H. R., chief inspector, Liverpool city police force.

PERSONALIA

APPOINTMENTS

Mr. Alan Brook, deputy town clerk of Tynemouth, has been appointed deputy town clerk of Wallasey. Mr. Brook is thirty-seven years of age and has held previous appointments as committee and legal clerk at Keighley and senior assistant solicitor at Tynemouth. During the war he served in the A.F.S., and N.F.S. The present deputy town clerk, Mr. A. Graham Harrison, has been appointed town clerk in place of Mr. Emrys Evans who is retiring. Mr. Harrison is thirty-six and was appointed assistant solicitor in 1939, previously holding the same position at Birkenhead and Kingston-upon-Hull. During the war he served in the Royal Navy attaining the rank of Lieutenant Commander, and received the D.S.C. He was appointed senior assistant solicitor in 1946, town clerk in 1947, and deputy town clerk in the same year.

Mr. Ernest Pears, deputy town clerk of Dartford for two years has been appointed clerk and solicitor to Shipley (Yorks) urban district council.

Mr. William John Wilkins has been appointed probation officer in the Lancashire No. 11 Combined Probation Area to replace Mr. E. A. Long who has resigned to take up similar work in Malaya. Mr. Wilkins has been assigned to St. Helens borough.

NOTICE

The next court of quarter sessions for the borough of Guildford will be held on July 8, 1950, at 11 *a.m.*, at the Guildhall, Guildford.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Building Materials and Housing Act, 1945, s. 7—*Revocation of conditions.*

In 1947 my council granted a licence for the erection of a dwelling-house, and imposed conditions as to its selling and letting value. The council has now received representations from the developer that further conditions attached to the licence, that no controlled materials were to be used, and no paid labour was to be engaged, make it a case in which it was unfair to impose the restriction as to the selling figure, as by the conditions of materials and labour he was not given any preferential treatment. He now asks if the council will rescind the condition as to the sale on the grounds that such a condition was not justly imposed. I am of opinion that having once imposed the conditions the council is not in a position to revoke them, and they must remain until such time as the relevant section of the 1945 Act expires.

Would you kindly advise as to whether you agree with my opinion or not? ADF.

Answer.

We agree, both on the language of the Act and on the reason of the matter.

2.—Criminal Justice Act, 1948—*Committal for sentence under s. 29—Character and antecedents—Outstanding charges.*

With regard to your views in your Note of the Week "Summary Trial of Indictable Offence" at p. 26 *ante*, I would be glad of your opinion as to whether other cases to be taken into consideration can be included in the term "character and antecedents."

In the case I have in mind, the defendant was charged with obtaining foreign stamps by larceny by trick. The prosecution made no representation for committal for trial. The defendant elected to be tried summarily and pleaded guilty. The police gave the defendant a good character, with no previous convictions, but asked, at the defendant's request, that some forty other similar cases be taken into consideration. Could the justices have committed the defendant for sentence at quarter sessions under s. 29?

Would it make any difference to your opinion if the defendant had been charged with the other offences at the same time and convicted, instead of asking for the other cases to be taken into consideration? STUM.

Answer.

We think the expression "character and antecedents" includes a man's previous conduct and way of life, and that the fact that he has been engaged in committing numerous offences is just as much a part of his antecedents as the fact that he has worked in various jobs. For this reason we hold that outstanding charges admitted by the defendant may be a good ground for committing for sentence.

If the additional charges were preferred, that fact would justify the court in deciding not to give the defendant the option of a summary trial, because it might well consider its powers of punishment, in the event of conviction upon a number of such charges, to be inadequate. Section 24 of the Criminal Justice Act, 1925, expresly refers to this.

3.—Education Act, 1944, s. 39—*Proceedings for non-attendance—Venue.*

By s. 39 of the Education Act, 1944, "if any child of compulsory school age who is a registered pupil at a school fails to attend regularly thereat the parent of the child shall be guilty of an offence against this section." I shall be glad to have your opinion as to the correct venue in those cases where the school is situate within one petty sessional division but the parents live in another. Although under s. 36 of the Act it is the duty of the parent to cause the child to receive full-time education it would appear from s. 39 that the offence is the non-attendance at the school and the school is the focal point for the purposes of proceedings. On the other hand, in the case of "border children" the inference to be drawn from s. 40 (2) (*b*) is that proceedings may be taken by the local education authority in which the school is or in whose area the parents reside. S.E.W.P.

Answer.

It seems clear that there is an alternative venue. The offence may be said to arise where there is the failure to attend, but s. 40 (2) (*b*) *supra*, shows that there is also a venue where the child belongs, which we take to mean where his home is. Evidently either local education authority may take proceedings, and we think these may be taken in its own area.

4.—Husband and Wife—*Maintenance of children—Order in respect of child who attained age of sixteen in November, 1949—Can further maintenance now be ordered?—Married Women (Maintenance) Act, 1949, s. 2.*

Some years ago an order was made by a court of summary jurisdiction under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, which provided for payment of a sum to the wife by way of maintenance and of a further sum for the child of the marriage until he attained the age of sixteen. The child attained sixteen in November last. Can application now be made for the maintenance to be continued pursuant to s. 2 of the Married Women (Maintenance) Act, 1949, or must application be made in such cases before the child has attained sixteen? If application can now be made, does the order take effect from the date when the order was made or when the child attained sixteen? It is to be noted that (*a*) subs. (1) speaks of a power to vary as opposed to power to revive, (*b*) subs. (2) uses the words "a child for whose provision is made" and not "a child for whose provision is *or has been* made," (*c*) on the other hand the words "is or will be engaged, etc., after attaining the age of sixteen years" would appear to imply that the application may be made after the child has attained sixteen.

S. CONJUNX.

Answer.

Since our learned correspondent addressed his question to us, the point has been decided in *Norman* v. *Norman* (1950) W.N. 230. The order can be continued.

In our opinion the variation dates from the date when the variation is made and is not retrospective. The section is by no means clearly worded, but we should advise against the assumption of power to make a retrospective order in the absence of definite authority to do so.

5.—Husband and Wife—*Maintenance order—Wife goes to New Zealand—Enforcement of arrears.*

In 1945 Mr. X who was in the forces married Miss Y. In May, 1946, he was demobilized from the forces and settled with his wife in London, living at the home of his wife's sister. Early in 1948 Mr. X agreed to his wife's suggestion that they should emigrate to New Zealand, as her other sister who was living in that country had promised to find them employment. In July, 1948, Mr. X told his wife that he had decided that he would not go to New Zealand, and that he proposed to return to his home town, and on his wife asking him what was to become of her, he replied that she would be better off without him. The next day Mr. X terminated his employment in London and returned to his home town leaving his wife in London. The wife sought legal advice, and in August, 1948, she obtained a maintenance order against her husband on the grounds of his desertion and wilful neglect to provide reasonable maintenance for her. The maintenance order was that the husband should pay his wife £1 10s. per week. After the order was made the husband made regular payments to his wife through the court and he kept up these payments until November, 1948, when he was informed by his mother that his wife had sailed for New Zealand. His mother in fact had gone to the docks to see his wife sail.

On December 15, 1948, a summons for arrears was issued by the court collecting officer. This summons was adjourned from time to time and was finally disposed of in January, 1950, when the S magistrates, to whom the case had been remitted, ordered that the arrears should be paid. These arrears were only up to December 15, 1948, and it is now anticipated that a further summons for arrears will be issued. The reason for the adjournment from December, 1948, to January, 1950, was to enable the husband, who had stated that he wished to be reconciled to his wife, to write to her to this effect and both he and instructing solicitors wrote to her asking whether she was prepared to return to this country. On one occasion when the husband appeared in court he said he wished to be reconciled with his wife and offered to pay her passage to this country. No reply was received to these letters or offers although the wife's solicitor hinted that these offers were not genuine. As a result of the wife's reluctance to return to this country to become reconciled with her husband, the husband on November 21, 1949, attempted to issue a summons against his wife for the maintenance order to be revoked on the grounds that she had refused his genuine offer to be reconciled. The court, however, stated that no such summons could be served on the wife in New Zealand.

We should be glad therefore if you would inform us whether it is your opinion that (*a*) a wife either by letter or through the court

collecting officer can summon her husband for arrears although she is outside the jurisdiction of the English courts, and (*b*) whether it is impossible for him to have the order revoked or varied.

If the wife is so entitled to enforce the arrears, whilst the husband is unable to issue a summons to revoke or vary the order, it would appear that the husband must endure considerable hardship and the practical effect is that the wife, who is a young woman, is pensioned off in New Zealand without the husband being able to do anything about it. SAAN.

Answer.

Opinions differ on the points raised, some holding that if the wife chooses to place herself outside the jurisdiction of the courts she cannot have recourse to them for the purpose of enforcing her order ; others consider she does not lose her rights entirely, and that the matter of enforcement is discretionary in the court. On the whole, we take the latter view, and our opinions are :

(*a*) Yes, but it may be noted that the collecting officer has a discretion under s. 4 (2) of the Married Women (Maintenance) Act, 1949, and if he does not apply for process it will be left to the wife to apply in her own name through her solicitor in this country.

(*b*) No, because unfortunately the summons cannot be served on the wife.

We think the court may properly hesitate to enforce arrears if the husband satisfies it that he has grounds for submitting that the order ought to be varied or discharged.

The whole position is unsatisfactory and shows that the law might well be amended so as to clear up these difficulties.

6.—Landlord and Tenant—*Covenant by lessee to erect and maintain fence—Assignment of lease—Privity of estate.*

An assignment was taken of one of a row of leasehold dwelling-houses. The lease on which the property is held contains (*inter alia*) a covenant by the lessees, for themselves and their assigns, to erect a fence within six months of the date of execution of the lease and thereafter to maintain it. This fence was not, in fact, erected by the lessee as the adjoining owner had some time previously put up a fence to protect his own property. At the date of assignment the expressed period for erection of the fence had long since expired. The assignee is now resisting a request that he erect the fence under the covenant, relying on *Grescott* v. *Green* (1700) Holt K.B. 177.

I should value your opinion whether the assignee can now be compelled to erect the fence. ADF.

Answer.

We think not. *Grescott* v. *Green*, *supra*, seems still to be good law.

7.—Local Land Charges—*Planning restrictions—Continuance of registered entry.*

In answering P.P. 10 (2) at p. 72 *ante*, have you not overlooked r. 13 (2) of the Local Land Charges Rules, 1934 ? ADD.

Answer.

No. That rule says that the entry in the register is to be cancelled when the charge "has been discharged or become unenforceable." Charges consisting of conditions attached to planning permission will, typically, be intended to run with the land after completion of development in accordance therewith. Indeed, as against the original developer, who is (normally) the person to whom the condition is first made known, registration as a local land charge is pointless.

8.—Probation of offenders—*Commission of further offence after order made by quarter sessions—Procedure.*

I should be glad if you would enlighten me as to the correct procedure for dealing with a person placed on probation at a court of quarter sessions under the Criminal Justice Act, 1948, who commits a new offence, and is sentenced for that offence to a term of imprisonment. I understand that the probationer, upon release from prison, must be brought before a court of summary jurisdiction for the breach of probation, and after this has been proved he must formally be committed to the original court of quarter sessions. I am anxious to know whether the police or the probation officer should lay the information for the summons to bring him before the court of summary jurisdiction for breach of probation. S.O.E.

Answer.

The Criminal Justice Act, 1948, draws a definite distinction between a breach of a requirement in a probation order and the commission of a fresh offence during a period of probation or of conditional discharge. Breach of requirement is dealt with in s. 6 and a fresh offence in s. 8.

From the question, it appears that the second offence was dealt with by a court other than that which made the probation order, and that possibly the second court was not aware that the offence was committed during the period of probation. In that case the procedure is for information to be laid, and a summons or warrant granted, in accordance with s. 8 (1). The justice to issue process is one designated in s. 8 (2) (*c*) or (*e*). The Act does not say who should lay the information, and therefore the police or the probation officer may do so. We rather think that in the case of fresh offences it may be desirable for the police to take action, but no doubt it is a matter for arrangement.

If the new term of imprisonment is substantial it would be well to apply for a warrant at once and to arrange for the prisoner to be brought up, under a Secretary of State's Order, rather than to have him arrested on his leaving prison.

9.—Public Health Act, 1936—*Sewers—Vesting declaration—Sewer constructed under emergency powers.*

In 1942, the Army requisitioned Whiteacre as a camp. Sewage was led through Blackacre to Greenacre, which the Army also requisitioned and converted into a sewage disposal works. The sewer leading through Blackacre was constructed by the Army, who entered Blackacre for that purpose under their emergency powers. Blackacre was not itself requisitioned.

The Army are now in course of de-requisitioning the properties and propose, in effect, to "sell" the sewers and sewage disposal works to Slopton R.D.C., within whose district all properties lie.

1. Can the R.D.C., prior to the de-requisitioning, make a declaration under s. 17 of the Public Health Act, 1936, (after due notice to the various owners) and so vest the entire sewage system in the R.D.C. ?

2. If not, when de-requisitioning takes place, can the R.D.C. make such a declaration, and so avoid having to enter into separate agreements with the various owners ?

Dozens of different properties and owners are in fact involved. A. SUBSCRIBER.

Answer.

The query as put to us looks deceptively simple ; we should, for example, have supposed that questions of "Government war works" would arise : *see* Requisitioned Land and War Works Act, 1945. Leaving aside such complications, and dealing with the query at face value, we think such a declaration can be made. It will not operate on any Crown property, or on any other property of which the Army holds possession, so long as that possession continues.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

NORTH RIDING OF YORKSHIRE

Petty Sessional Division of Pickering Lythe West

Appointment of Part-Time Clerk to Justices

APPLICATIONS are invited for the above appointment from persons duly qualified. The salary will be £261 per annum. The successful applicant will be required to provide an office at Pickering together with all necessary clerical staff, books, stationery, travelling, etc.

Applications, together with the names of three referees, should be sent to the undersigned and marked on the outside "Clerk to Justices" not later than June 30, 1950.

C. L. BALDWIN, Major,
Chairman of the Magistrates.

Friar's Hill,
Sinnington,
Yorks.
June 14, 1950.

BOROUGH OF BACUP

Appointment of Town Clerk

APPLICATIONS are invited from Solicitors with previous local government experience for the appointment of Town Clerk at a commencing salary of £800 per annum, rising (subject to satisfactory service) by annual increments of £50 to a maximum of £950 per annum. The Conditions of Service in the Second Schedule to the Memorandum of Recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks will apply.

The appointment will be subject to three months' notice on either side, and to the provisions of the Local Government Superannuation Act, 1937. The successful candidate will be required to pass a medical examination.

Assistance will be given to the successful candidate in the provision of housing, if required.

Applications, stating age, experience and qualifications and the names of not more than three referees to whom reference may be made, should reach the undersigned not later than July 4, 1950.

Candidates should state whether they are related to any member or senior officer of the Council, and canvassing in any form will disqualify.

C. G. EVERATT,
Town Clerk.

Municipal Offices,
Bacup.
June 12, 1950.

NORTH WESTERN GAS BOARD

Appointment of Legal Staff

APPLICATIONS are invited for the following positions in the Board's Legal Department :—

1. Deputy Legal Officer. Applicants should be solicitors. Experience in common law, factory legislation, general litigation and advocacy is desirable. Salary not less than £1,000 per annum.

2. General Law Clerk able to work with a minimum of supervision on conveyancing, contracts and general litigation. Experience as Solicitor's Managing Clerk would be an advantage. Salary not less than £800 per annum.

The successful applicants may be required to pass a medical examination and to contribute to any superannuation scheme established by the Board.

Applications, with full particulars of the candidate and the names and addresses of two referees, should be sent in an envelope suitably endorsed to reach the undersigned not later than June 30, 1950.

S. G. DEAVIN,
Secretary.

Bridgewater House,
60, Whitworth Street,
Manchester, 1.

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